MISSISSIPPI CODE 1972
Annotated

Law and Statutes
Jurisdiction and Holidays
Legislative Department
Executive Department
Courts

Titles 1 to 9

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MISSISSIPPI CODE
1972
ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME TWO

LAW AND STATUTES
JURISDICTION AND HOLIDAYS
LEGISLATIVE DEPARTMENT
EXECUTIVE DEPARTMENT
COURTS

§§ 1-1-1 to 9-27-21

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2019 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

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PUBLISHER'S FOREWORD

This 2019 Replacement Volume 2 of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, the 1991 Replacement Volume 2, the 2002 Replacement Volume 2, and the 2014 Replacement Volume 2, reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2019 Regular Legislative Session.

This volume contains the text of Titles 1 through 9 of the Mississippi Code of 1972 Annotated, as amended through the 2019 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22906-5389.

September 2019 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Code Status
— Comparable Laws from other States
— Court Rules
— Cross References
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— Placement of Notes
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— Research and Practice References
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— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted. Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LAWS FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Laws from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Laws from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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ANNOTATED

VOLUME TWO

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§§ 1-1-1 through 1-1-6. Repealed.

Repealed by Laws, 1996, ch. 502, § 21, eff from and after passage (approved April 11, 1996).

§§ 1-1-1 through 1-1-6. [Codes, 1942, §§ 21-01 through 21-03, 21-10; Laws, 1970, ch. 465, §§ 1-3; Laws, 1970, ch. 394, § 5]

Editor's Notes — Former § 1-1-1 was entitled: Recodification of state statutes–authority to contract for. For present provisions, see § 1-1-101 et seq.

Former § 1-1-3 was entitled: Legislative intent. For present provisions, see § 1-1-101 et seq.

Former § 1-1-5 was entitled: Supervision and control–approval of legislature. For present provisions, see § 1-1-101 et seq.

Former § 1-1-6 was entitled: Power of attorney general to correct certain errors. For present provisions, see § 1-1-101 et seq.

§ 1-1-7. Contents.

The Mississippi Code of 1972 shall cover all sections of and amendments to the Constitution of the United States and the Constitution of the State of Mississippi; all operative and effective sections of the Mississippi Code of 1930 and amendments thereto; all operative and effective sections of the Mississippi Code of 1942, Recompiled, and amendments thereto; and all operative and effective session laws of a general and permanent nature enacted since the publication of the Mississippi Code of 1930 down through the 1971 Regular Session of the Legislature.

The Mississippi Code of 1972 shall contain, in addition to the material set out above, case notes or case statements covering pertinent court decisions construing or applying Mississippi statutes, volume and general indexes, and such other useful matters, tables, information, and ancillaries as the Joint Committee on Compilation, Revision and Publication of Legislation deems to be desirable and practicable to include. Opinions of the Attorney General also may be annotated.

HISTORY: Codes, 1857, ch. 1, art. 1; 1871, § 1; 1880, § 1; 1892, § 1; 1906, § 1; 1930, § 1; 1942, §§ 2, 4, 12, 21-04; Laws, 1942, ch. 318; Laws, 1970, ch. 465, § 4; Laws, 1996, ch. 502, § 7; Laws, 1998, ch. 546, § 18, eff from and after July 1, 1998.

Editor's Notes — By Senate Bill No. 2034, Chapter 394, Laws of 1972, the Legislature adopted the Mississippi Code of 1972 as the legal public statutes of the state.

Cross References — For another section derived from same 1942 code section, see Code § 1-1-17.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes §§ 270-272.

§ 1-1-8. Official code; recognition as evidence of public statute laws; restrictions on use of certain words or names in title of codes other than official version.

(1) The Mississippi Code of 1972 Annotated, as amended, modified and revised from time to time, that is published by the company with which the Joint Legislative Committee on Compilation, Revision and Publication of Legislation has contracted under Section 1-1-107(a):

(a) Is the official code of the public statute laws of the State of Mississippi that are enacted by the Legislature; and

(b) Shall be used, received, recognized and referred to as the official code of the public statute laws of the State of Mississippi, and shall be considered as evidence of the public statute laws of the State of Mississippi, in all courts of the State and by all public officers, offices, departments and agencies of the state and its political subdivisions, and in all other places or instances where the public statute laws of the State may come into question. However, if there is any conflict between the language of any statute as it appears in the Mississippi Code of 1972 Annotated and in the General Laws of Mississippi, the language in the General Laws shall control; and if there is any conflict between the language of any statute as it appears in the General Laws of Mississippi and in the original enrolled bills enacted by the Legislature, the language in the enrolled bills shall control.

(2) No publisher of a code of the public statute laws of the State of Mississippi, other than the publishing company with which the Joint Legislative Committee on Compilation, Revision and Publication of Legislation has contracted under Section 1-1-107(a), shall be authorized to use as the name, title or designation of the code that is published, the words "Mississippi Code of 1972," "Mississippi Code 1972," "Mississippi Code of 1972 Annotated," "Mississippi Code 1972 Annotated," "Annotated Mississippi Code of 1972," "Annotated Mississippi Code 1972," or any other combination of words containing "Code of 1972," "Code 1972" or "1972 Code." The joint committee may seek injunctive relief, or authorize the publisher of the official code to seek injunctive relief on behalf of the joint committee, against any person or entity to enforce the provisions of this subsection.

HISTORY: Laws, 1999, ch. 310, § 2, eff from and after passage (approved Mar. 8, 1999).

Cross References — Revised manuscript for Mississippi Code of 1972 declared to be official code of the State of Mississippi, see § 1-1-35.

Advance sheets; contract for publication; distribution; provision of information to publisher, see § 1-1-58.

General power and duties of Joint Legislative Committee on Compilation, Revision and Publication of Legislation, see § 1-1-107.

Authority of Joint Legislative Committee on Compilation, Revision, and Publication of Legislation relating to preparation of legislative acts for publication, see § 1-1-109.

Approval by Joint Legislative Committee on Compilation, Revision and Publication of Legislation of manuscripts of supplements and replacement volumes prepared by publishing company, see § 1-1-111.

RESEARCH REFERENCES

Law Reviews.

Pre-1900 Mississippi Legal Authority, 73 Miss. L.J. 195, Fall, 2003.

§ 1-1-9. Copyright; use of code material.

(1) Copyrights of the Mississippi Code of 1972 and the notes, annotations, and indexes thereof, shall be taken by and in the name of the publishers of the compilation who shall thereafter promptly assign the same to the State of Mississippi and be owned by it.

(2) All parts of any act passed by the Mississippi Legislature, or of any code published or authorized to be published by the Joint Committee on Compilation, Revision and Publication of Legislation, including, without limitation, catchlines or frontal analyses; numbers assigned to sections, articles, chapters and titles; historical citations or source lines; editor's notes; amendment notes; cross references; annotations; and summaries of judicial decisions and Attorney General's opinions, shall become and remain the exclusive property of the State of Mississippi, to be used only as the joint committee may direct.

(3)(a) If any person or entity uses any part of any act passed by the Mississippi Legislature, or any part of any code published or authorized to be published by the joint committee, in any manner other than as authorized by the committee, the person or entity shall be subject to a civil penalty of not less than One Thousand Dollars ($1,000.00) for each violation, and each day upon which a violation occurs shall be deemed a separate and additional violation.

(b) If the joint committee suspects that any person or entity is violating or has violated this section, the Attorney General shall investigate the matter upon the request of the joint committee. If the Attorney General determines, after investigation, that the person or entity is violating or has violated this section, the Attorney General shall institute an action to impose a civil penalty against the person or entity, or seek injunctive relief against the person or entity to prevent further violations of this section, or both, as requested by the joint committee.

(c) Civil penalties may be recovered in a civil action brought by the Attorney General in the Chancery Court of the First Judicial District of Hinds County, Mississippi, or in the chancery court of the county of residence of the person or entity against whom the penalty is sought. If the person or entity is a nonresident of the State of Mississippi, the action shall be brought in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

(d) All civil penalties recovered shall be deposited into the State General Fund.

HISTORY: Codes, 1942, § 8; Laws, 1942, ch. 318; Laws, 1996, ch. 502, § 8; Laws, 1998, ch. 546, § 2, eff from and after July 1, 1998.

Editor's Notes — At its meeting on May 20, 1998, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation adopted the following statement:

"It is not the intent of Section 1-1-9(2) to prohibit any person from citing or referring to Code section numbers, articles, chapters or titles, or to require any person to obtain permission of the joint committee before citing or referring to Code section numbers, articles, chapters or titles. If there is any concern that Section 1-1-9(2) does require such advance permission of the committee, the committee hereby authorizes any person to cite or refer to any Code section number, article, chapter or title at any time after June 30, 1998, without specific permission of the committee being required for such usage."

RESEARCH REFERENCES

CJS.

C.J.S. Copyrights and Intellectual Property §§ 20, 27, 93.

§ 1-1-11. Distribution of the Code of 1972.

(1) Except as provided in subsection (2) of this section, the Joint Committee on Compilation, Revision and Publication of Legislation shall distribute or provide for the distribution of the sets of the compilation of the Mississippi Code of 1972 purchased by the state as follows:

Fifty-seven (57) sets to the Mississippi House of Representatives and forty (40) sets to the Mississippi Senate for the use of the Legislative Reference Bureau, Legislative Services Offices, staffs and committees thereof.

Ten (10) sets to the Governor's Office; nine (9) sets to the Secretary of State; and twenty (20) sets to the Auditor's Office.

One (1) set to each of the following: the Lieutenant Governor; each member of the Legislature; the Treasurer; each district attorney; each county attorney; each judge of the Court of Appeals and each judge of the Supreme, circuit, chancery, county, family, justice and municipal courts; each Mississippi Senator and Mississippi Representative in Congress; State Superintendent of Education; Director of the Department of Finance and Administration; six (6) sets to the Performance Evaluation and Expenditure Review (PEER) Committee; three (3) sets to the Director of the Legislative Budget Office; the Commissioner of Agriculture and Commerce; each Mississippi Transportation Commissioner; six (6) sets to the Department of Corrections; the Insurance Commissioner; the Clerk of the Supreme Court; the State Board of Health; each circuit clerk; each chancery clerk in the state for the use of the chancery clerk and the board of supervisors; each sheriff in the state for the use of his office and the county officers; and each county for the county library (and an additional set shall be given to each circuit clerk, chancery clerk, sheriff and county library in counties having two (2) judicial districts).

Two (2) sets to the Department of Archives and History; two (2) sets to the State Soil and Water Conservation Commission; sixty-eight (68) sets to the Attorney General's office; six (6) sets to the Public Service Commission; four (4) sets to the Public Utilities Staff; thirty-five (35) sets to the Department of Revenue; one (1) set to the Board of Tax Appeals; two (2) sets to the State Personnel Board; six (6) sets to the State Law Library; one (1) set to the Library of Congress; ten (10) sets to the University of Mississippi Law School; one (1) set each to the Mississippi School for the Deaf and the Mississippi School for the Blind; one (1) set each to the University of Mississippi, Mississippi State University, Mississippi University for Women, University of Southern Mississippi, Delta State University, Alcorn State University, Jackson State University, Mississippi Valley State University, and the Board of Trustees of State Institutions of Higher Learning; and one (1) set to the Supreme Court judges' conference room. In furtherance of the State Library's reciprocal program of code exchange with libraries of the several states, the joint committee shall, at the direction and only upon the written request of the State Librarian, distribute or provide for the distribution of sets of the code to such libraries.

One (1) set to each state junior or community college; three (3) sets to the Department of Wildlife, Fisheries and Parks; two (2) sets to the Department of Environmental Quality; two (2) sets to the Department of Marine Resources; two (2) sets to the Mississippi Ethics Commission; six (6) sets to the Mississippi Workers' Compensation Commission; four (4) sets to the State Department of Rehabilitation Services; and seven (7) sets to the Department of Human Services. One (1) set to each of the following: State Textbook Procurement Commission; University Medical Center; State Library Commission; Department of Agriculture and Commerce; Forestry Commission; and seventeen (17) sets to the Department of Public Safety. Also, one (1) set to each of the following: Adjutant General, Mississippi Development Authority, Department of Banking and Consumer Finance, Bureau of Building, Grounds and Real Property Management, the State Educational Finance Commission, the Mississippi Board of Vocational and Technical Education, Division of Medicaid, State Board of Mental Health, and Department of Youth Services.

The joint committee is authorized to distribute or provide for the distribution of additional sets of the Mississippi Code, not to exceed three (3) sets, to the office of each district attorney for the use of his assistants.

The joint committee shall provide to the Mississippi House of Representatives and the Mississippi Senate the annual supplements to the Mississippi Code of 1972 for each set of the code maintained by the House and Senate.

The set of the Mississippi Code of 1972 to be provided to each member of the Legislature shall be provided unless specifically waived by such legislator in writing.

An elected or appointed officeholder in the State of Mississippi, except for a member of the Legislature, shall deliver to his successor in office, or to the joint committee if there is no successor, the set of the Mississippi Code of 1972 provided the officeholder under this section.

Before the joint committee delivers or provides for delivery of a copy of the Mississippi Code of 1972 to an individual officeholder, the joint committee shall prepare and submit a written agreement to the officeholder. The agreement shall, among other provisions, state that the code is the property of the State of Mississippi, that it shall be transferred to the officeholder's successor in office, that the officeholder has an obligation to make such transfer and that the officeholder shall be responsible for the failure to deliver the code and for any damage or destruction to the code, normal wear and tear excepted. The joint committee shall execute the agreement and forward it to the officeholder for execution. The joint committee shall not deliver or provide for delivery of the code to the officeholder until the executed agreement is received by the committee. The joint committee may include in the agreement such other provisions as it may deem reasonable and necessary. In addition to damages or any other remedy for not transferring a set of the code to his successor, an officeholder who does not transfer his set of the code shall be guilty of a misdemeanor and shall, upon conviction, pay a fine of One Thousand Dollars ($1,000.00). Upon request of the joint committee, the Attorney General shall assist the joint committee in taking such actions as necessary to require an officeholder to transfer the set of code provided under this section to his successor, or to the joint committee if there is no successor, and to recover reimbursement or damages from any officeholder for the loss of or damage or destruction to any volumes of the set of the code provided under this section, other than normal wear and tear.

Replacement of missing, damaged or destroyed sets or volumes of the code provided by this chapter may be obtained from the code publisher through the joint committee at the established state cost, the cost to be borne by the recipient.

No more than one (1) set of the Mississippi Code of 1972 shall be furnished to any one (1) individual, regardless of the office or offices he may hold.

(2)(a) The joint committee, in its discretion, may determine whether electronic access to the Mississippi Code of 1972 is available and a sufficient substitute for actual bound volumes of the code and, if so, may omit furnishing any one or more sets otherwise required by this section.

(b) Each elected state official, elected state district official and member of the Legislature shall receive a CD-ROM version of the Mississippi Code of 1972 in lieu of bound volumes of the Mississippi Code of 1972 unless the official or member of the Legislature makes a request in writing to the Joint Committee on Compilation, Revision and Publication of Legislation that he receive bound volumes of the Mississippi Code of 1972.

HISTORY: Codes, 1942, § 7; Laws, 1942, ch. 318; Laws, 1944, ch. 314; Laws, 1966, ch. 395, § 1; Laws, 1973, ch. 425, § 1; Laws, 1974, ch. 377; Laws, 1978, ch. 458, § 4; Laws, 1981, ch. 536, § 1; Laws, 1988, ch. 486, § 1; Laws, 1988, ch. 518, § 14; Laws, 1990, ch. 402, § 1; Laws, 1991, ch. 530, § 6; Laws, 1992, ch. 543, § 11; Laws, 1993, ch. 430, § 8; Laws, 1993, ch. 518, § 8; Laws, 1997, ch. 385, § 1; Laws,

1998, ch. 325, § 1; Laws, 1998, ch. 546, § 3; Laws, 1999, ch. 310, § 1; Laws, 2000, ch. 511, § 1; Laws, 2003, ch. 551, § 1; Laws, 2009, ch. 492, § 7; Laws, 2010, ch. 376, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 1 of ch. 325 Laws, 1998, effective from and after July 1, 1998 (approved March 12, 1998), amended this section. Section 3 of ch. 546, Laws, 1998, effective July 1, 1998 (approved April 1, 1998), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 546, Laws, 1998, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 37-43-2 provides that the State Board of Education shall assume all power, authority, duties and functions of the State Textbook Procurement Commission.

Section 37-45-3 provides that the State Educational Finance Commission shall be abolished and functions and duties transferred to the State Board of Education. Section 37-45-3 further provides that all references in laws of the state to "State Educational Finance Commission" or "commission," when referring to the Educational Finance Commission, shall be construed to mean the State Department of Education.

Laws, 1993, ch. 518, § 45, provides as follows:

"Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

The United States Attorney General, by letter dated July 13, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1993, ch. 518, § 8.

The United States Attorney General, by letter dated August 17, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1995, ch. 486, § 1.

Laws of 2009, ch. 492, §§ 144 and 146 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals.

Joint Legislative Committee Note — "SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Cross References — Purchase and distribution of pocket part supplements and replacement bound volumes by Secretary of State, see § 1-1-57.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 1-1-12. Binding and identification of state-owned copies of Code of 1972.

The sets of the Mississippi Code of 1972 purchased by the State to be distributed by the joint committee according to the designation in Section 1-1-11 shall be bound in a different color binding from that used in binding sets offered for sale to private purchasers. In addition to the distinctive color, the binding of each volume shall have stamped thereon in a contrasting color the words "Property of the State of Mississippi." Each of such sets of the Code as distributed shall be for use of the official in his official business and shall be returned to the state when the official vacates the office or when the office is abolished, as provided in Section 1-1-11. However, none of the provisions of this section shall apply to those sets to be distributed to members of the Legislature.

HISTORY: Codes, 1942, § 7.5; Laws, 1972, ch. 412, § 1; Laws, 1973, ch. 425, § 2; Laws, 1998, ch. 546, § 19, eff from and after July 1, 1998.

§ 1-1-13. When Code of 1972 to take effect.

The Mississippi Code of 1972, except as expressly provided, shall take effect on the first day of November, one thousand nine hundred and seventy-three, and from that day it shall be received in use, and shall supersede all prior statutes and clauses therein revised, and hereby repealed.

HISTORY: Codes, 1857, ch. 1, art. 2; 1871, § 8; 1880, § 2; 1892, § 2; 1906, § 2; 1930, § 2; 1942, § 13.

JUDICIAL DECISIONS

1. In general.

Former statute making it an offense to keep, have in possession, sell or give away intoxicating liquor, and providing for gradation of punishment for repeating offenders, notwithstanding repeal under this section, must be considered by way of aid to a proper construction or interpretation of the revised abridgment which took its place. Millwood v. State, 190 Miss. 750, 1 So. 2d 582, 1941 Miss. LEXIS 91 (Miss. 1941), aff'd, 6 So. 2d 619 (Miss. 1942).

Words omitted in the publication of the code, and which are contained in the copy on file in the office of the secretary of state, must control in the construction of the statute. Nugent v. Mayor, etc., of Jackson, 72 Miss. 1040, 18 So. 493, 1895 Miss. LEXIS 70 (Miss. 1895).

A purely local act, devised to meet the needs of a single community, was not repealed by a similar provision (Code of 1892). Jones v. Melchoir, 71 Miss. 115, 13 So. 857, 1893 Miss. LEXIS 70 (Miss. 1893); Adams v. Dendy, 82 Miss. 135, 33 So. 843, 1903 Miss. LEXIS 113 (Miss. 1903).

RESEARCH REFERENCES

Am. Jur.	**CJS.**
73 Am. Jur. 2d, Statutes §§ 245 et seq.	C.J.S. Statutes §§ 388, 390.

§ 1-1-15. Repealed.

Repealed by Laws, 1999, ch. 310, § 3, eff from and after March 8, 1999.

§ 1-1-15. [Codes, 1857, ch. 1, art. 13; 1871, § 12; 1880, § 9; 1892, § 9; Laws, 1906, § 9; Laws, 1930, § 9; Laws, 1942, §§ 9, 20; Laws, 1942, ch. 318]

Editor's Notes — Former § 1-1-15 provided that the Mississippi Code of 1972, when published pursuant to the contract authorized by § 1-1-1, was evidence of the statute laws of this State. For present provisions, see § 1-1-8.

§ 1-1-17. Appropriations.

The cost of the recodification of the laws of Mississippi will be provided by appropriations to implement the purposes of Sections 1-1-1, 1-1-3 and 1-1-5.

HISTORY: Codes, 1942, § 21-04; Laws, 1970, ch. 465, § 4, eff from and after passage (approved April 6, 1970).

Editor's Notes — Sections 1-1-1, 1-1-3 and 1-1-5 referred to in this section were repealed by Laws of 1996, ch. 502, § 21, effective from and after passage (approved April 11, 1996).

Cross References — For another section derived from same 1942 code section, see § 1-1-7.

§ 1-1-19. Repeal of former statutes — Effect of Code of 1972 upon laws enacted at same session or before Code takes effect.

From and after the effective date of the Mississippi Code of 1972, subject to any express provisions relating thereto which may be found in the Mississippi Code of 1972, all acts or parts of acts, all sections or parts of sections of the Mississippi Code of 1930, and all sections or parts of sections of the Mississippi Code of 1942, Recompiled, the subjects whereof are revised, consolidated and re-enacted in the Mississippi Code of 1972, or repugnant to the provisions contained therein, shall be, and the same are hereby, repealed, but with respect to statutes brought forward in the Mississippi Code of 1972, that code shall be deemed to be a continuation and not a new enactment. It is especially provided, however, that no curative or validation statute, of any nature or kind whatsoever, shall be affected by the adoption of the Mississippi Code of 1972, in so far as the curative or validation provisions or portions of any such statute are concerned.

Notwithstanding the provisions of the first paragraph of this section, no section or provision of the Mississippi Code of 1972 shall supersede or repeal by implication any law passed at the same session of the legislature at which the Mississippi Code of 1972 is adopted, or passed after the adoption of the

Mississippi Code of 1972 but before it shall have taken effect; and an amendatory law passed at such session or at any subsequent session before the Mississippi Code of 1972 takes effect shall not be deemed repealed, unless the contrary intent clearly appears.

Any amendment to any section or sections of the Mississippi Code of 1942, Recompiled, or to any part or parts of acts, the subjects of which are revised, consolidated and enacted in the Mississippi Code of 1972, passed at the same session at which the Mississippi Code of 1972 is adopted, or passed after the adoption of the Mississippi Code of 1972 but before it shall take effect, shall be deemed to amend the corresponding section or sections of the Mississippi Code of 1972.

HISTORY: Codes, 1857, ch. 1, art. 3; 1871, § 9; 1880, § 3; 1892, § 3; 1906, § 3; 1930, § 3; 1942, § 14.

Editor's Notes — The Mississippi Code of 1972 became effective on November 1, 1973.

JUDICIAL DECISIONS

1. In general.

Where statute, authorizing circuit judge to determine, in vacation, appeals from county court, was omitted, because considered unconstitutional, from Code taking effect subsequent to statute, though statute and Act adopting Code were approved by Governor on same day, statute held not in force after effective date of Code. Rackley v. State, 166 Miss. 287, 146 So. 459, 1933 Miss. LEXIS 348 (Miss. 1933).

Laws in force at the time of the adoption of the Code of 1892, having been revised, consolidated and re-enacted in that code, are repealed. State v. Jenkins, 73 Miss. 523, 19 So. 206, 1895 Miss. LEXIS 149 (Miss. 1895); Nugent v. Mayor, etc., of Jackson, 72 Miss. 1040, 18 So. 493, 1895 Miss. LEXIS 70 (Miss. 1895).

Under § 3 Code of 1892, which repeals the acts and parts of acts, "subjects" whereof are revised, consolidated and re-enacted in said code, the subject matter is to be determined with reference to the substantive thing done by the act, and not merely the purpose or mode of exercising the power conferred. Mayor, etc., of Vicksburg v. Sun Mut. Ins. Co., 72 Miss. 67, 16 So. 257, 1894 Miss. LEXIS 75 (Miss. 1894).

A purely local act, devised to meet the needs of a single community, was not repealed by a similar provision (Code of 1892). Jones v. Melchoir, 71 Miss. 115, 13 So. 857, 1893 Miss. LEXIS 70 (Miss. 1893); Adams v. Dendy, 82 Miss. 135, 33 So. 843, 1903 Miss. LEXIS 113 (Miss. 1903).

RESEARCH REFERENCES

Am. Jur.

73 Am. Jur. 2d, Statutes §§ 259 et seq.

CJS.

C.J.S. Statutes §§ 275, 280, 283.

§ 1-1-21. Effect of repeals by Code of 1972 upon former rights.

The repeal of any statutory provisions by the Mississippi Code of 1972 shall not affect any act done, or any cause of action, or any right accruing or accrued or established, or any suit or proceeding had or commenced in any civil case, or any plea or defense or bar thereto, previous to the time when such repeal shall take place; but the proceedings in every such case shall be conformed, as far as practicable, to the provisions of the Mississippi Code of 1972.

HISTORY: Codes, 1857, ch. 1, art. 5; 1871, § 13; 1880, § 4; 1892, § 4; 1906, § 4; 1930, § 4; 1942, § 15.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application.
2. Appeals.
3. Delinquent state revenues, collection of.
4. Futures, purchase or sale of.
5. Gasoline tax funds, payment of.
6. Unlawful detainer, action of.
7. Usury.

1. Construction and application.

This section [Code 1942, § 15] only preserves existing rights, and does not create any. Adams v. Fragiacomo, 71 Miss. 417, 15 So. 798, 1893 Miss. LEXIS 208 (Miss. 1893).

2. Appeals.

Where appeal from reassessment by city's governing authority to circuit court was in compliance with statutes then in effect, circuit court did not lose jurisdiction to hear appeal because law respecting appeal was changed before appeal was heard. City of Lexington v. Wilson's Estate, 170 Miss. 282, 151 So. 164, 1933 Miss. LEXIS 17 (Miss. 1933).

3. Delinquent state revenues, collection of.

The act of 1890 (Laws p. 25) providing for the collection of delinquent revenue by the state revenue agent, was repealed by the adoption of ch. 126 Code 1892, relating to the same subject. The suit pending was not saved by § 4 Code 1892. State ex rel. Revenue Agent v. Hill, 70 Miss. 106, 11 So. 789, 1892 Miss. LEXIS 75 (Miss. 1892).

4. Futures, purchase or sale of.

Contracts growing out of the purchase or sale of futures while the act of 1892 was in force, cannot be enforced in this state notwithstanding the repeal of said act by the Code of 1892, since § 4 of the code expressly saves existing rights and defenses. Lemonius v. Mayer, 71 Miss. 514, 14 So. 33, 1893 Miss. LEXIS 111 (Miss. 1893).

5. Gasoline tax funds, payment of.

Highway Commission held unauthorized to pay any of gasoline tax funds to State Tax Collector, suing on behalf of counties to obtain counties' alleged statutory share. State Highway Com. v. Gulley, 167 Miss. 631, 145 So. 351, 1933 Miss. LEXIS 80 (Miss. 1933).

6. Unlawful detainer, action of.

Under this section providing that any right accruing or accrued shall not be affected by the adoption of the code, the right to the action of unlawful detainer for land purchased at tax-sale 1892 is controlled by § 538 Code of 1880, which gives the remedy after one year and within two years from date of sale. Wilkerson v. Hudson, 71 Miss. 130, 13 So. 866, 1893 Miss. LEXIS 137 (Miss. 1893).

7. Usury.

Statute providing for recovery of usurious interest and statute providing that rate of interest should not be construed as increased by stipulation for payment of interest in period less than one year must be construed in pari materia in connection with provision of Code that repeal of statutory provisions thereby should not affect cause of action nor right accruing prior to effective date of repeal. Jefferson Standard Life Ins. Co. v. Dorsey, 178 Miss. 852, 173 So. 669, 1937 Miss. LEXIS 235 (Miss. 1937).

Statute providing that rate of interest specified by contract shall not be construed as increased by stipulation for payment of interest at periods less than one year held prospective in operation and not retroactive, and hence would not affect right to recover interest payments accruing prior to adoption thereof. Jefferson Standard Life Ins. Co. v. Dorsey, 178 Miss. 852, 173 So. 669, 1937 Miss. LEXIS 235 (Miss. 1937).

The change made by § 2348, Code of 1892, exempting building and loan association from the operation of a penalty against usury, did not free prior and illegal contracts from objection, for § 4 of the code preserves, unaffected, any existing cause of action or defense. Goodman v. Durant Bldg. & Loan Ass'n, 71 Miss. 310, 14 So. 146, 1893 Miss. LEXIS 74 (Miss. 1893).

RESEARCH REFERENCES

Am. Jur.
73 Am. Jur. 2d, Statutes §§ 231 et seq.

CJS.
C.J.S. Statutes §§ 275, 413.

§ 1-1-22. Prior rights or actions involving taxes unaffected.

Nothing in Section 1-1-35 shall affect or defeat any claim, assessment, suit, appeal right or cause of action for taxes due prior to April 26, 1972, whether such assessment, suit, appeal, or claim therefor shall have been begun before said date, or shall thereafter be begun; and the laws amended or repealed are expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due under any such laws prior to said date, and for the imposition of any penalty, forfeiture, or claim for a failure to comply therewith.

HISTORY: Codes, 1942, § 21-09; Laws, 1972, ch. 394, § 4, eff from and after passage (approved April 26, 1972).

RESEARCH REFERENCES

CJS.
C.J.S. Statutes § 413.

§ 1-1-23. Effect of adoption of Code of 1972 upon offenses committed prior to effective date of Code.

An offense committed, and a penalty or forfeiture incurred, previous to the time when the Mississippi Code of 1972 shall take effect, and an indictment or prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time when the Mississippi Code of 1972 shall take effect, shall not be affected by its adoption; but all such offenses, penalties, and forfeitures shall remain subject to the laws in force before the Mississippi Code of 1972 shall take effect, except that all the proceedings had thereafter shall be conducted according to the provisions thereof, and except that when any punishment, penalty, or forfeiture shall have been mitigated by the provisions of the Mississippi Code of 1972, such provisions may be applied to any judgment to be pronounced after the Mississippi Code of 1972 shall take effect.

HISTORY: Codes, 1857, ch. 1, art. 6; 1871, § 14; 1880, § 5; 1892, § 5; 1906, § 5; 1930, § 5; 1942, § 16.

Editor's Notes — The Mississippi Code of 1972 became effective on November 1, 1973.

Cross References — Change of law not affecting punishment of crime committed before change made, see § 99-19-1.

JUDICIAL DECISIONS

1. In general.

Under a similar section (§ 5, Code 1892), a particular act of conversion, which was not a crime at the time it was completely consummated, and was given the character of a crime for the first time under the Code of 1892, could not be regarded as a crime under the Code, and be punished under the old law. State v. Gillis, 75 Miss. 331, 24 So. 25, 1897 Miss. LEXIS 149 (Miss. 1897).

This section [Code 1942, § 16] has reference only to crimes and forfeitures and penalties connected with them or growing out of some offense. Goodman v. Durant Bldg. & Loan Ass'n, 71 Miss. 310, 14 So. 146, 1893 Miss. LEXIS 74 (Miss. 1893).

RESEARCH REFERENCES

Am. Jur.

73 Am. Jur. 2d, Statutes §§ 231 et seq.

CJS.

C.J.S. Statutes § 413.

§ 1-1-24. Prior violations of law and civil causes of action unaffected.

Nothing in Section 1-1-35 shall be construed to defeat or affect in any manner whatsoever the prosecution of any person, association, firm or corporation, for the violation of any law occurring prior to the first day of November, 1973 in any court of record, the trial therefor, or appeal therefrom, and nothing in Section 1-1-35 shall be construed to defeat or affect in any manner whatsoever any right of a civil cause of action in equity or law in any court of record, the trial thereof, or appeal therefrom occurring prior to the first day of November, 1973.

HISTORY: Codes, 1942, § 21-08; Laws, 1972, ch. 394, § 3, eff from and after passage (approved April 26, 1972).

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 413.

§ 1-1-25. No revival of repealed laws.

All statutes and parts of statutes which are repealed or abrogated by, or are repugnant to any law repealed by the Mississippi Code of 1972, and which have not been re-enacted or consolidated therein, shall continue to be so repealed, and shall remain abrogated.

HISTORY: Codes, 1857, ch. 1, art. 7; 1871, § 15; 1880, § 6; 1892, § 6; 1906, § 6; 1930, § 6; 1942, § 17.

RESEARCH REFERENCES

Am. Jur.
73 Am. Jur. 2d, Statutes §§ 300 et seq.

CJS.
C.J.S. Statutes § 300.

§ 1-1-27. Vacation of offices by adoption of Code of 1972.

The repeal of any statutory provision which is revised and consolidated in the Mississippi Code of 1972, by virtue of which any appointment shall have been made or any office is held, shall not be construed to vacate the office, or in any way to affect the appointment, except when otherwise expressly provided; but the appointment shall continue and the office shall be held subject to the provisions contained in the Mississippi Code of 1972.

HISTORY: Codes, 1857, ch. 1, art. 9; 1871, § 16; 1880, § 7; 1892, § 7; 1906, § 7; 1930, § 7; 1942, § 18.

RESEARCH REFERENCES

CJS.
C.J.S. Officers and Public Employees §§ 62, 100-103, 134.

§ 1-1-29. Effect of adoption of Code of 1972 upon private and local laws.

Private and local laws not revised and brought into the Mississippi Code of 1972 are not affected by its adoption unless it is expressly so provided therein.

HISTORY: Codes, 1857, ch. 1, art. 8; 1871, § 10; 1880, § 8; 1892, § 8; 1906, § 8; 1930, § 8; 1942, § 19.

JUDICIAL DECISIONS

1. In general.

Statutory provision as to election of Highway Commissioners, if invalid, is inseparable from other provisions. Trahan v. State Highway Com., 169 Miss. 732, 151 So. 178, 1933 Miss. LEXIS 7 (Miss. 1933).

The charter of a building and loan association, obtained under the general law, is not a local and private law under this section. And the law on usury is not local or private. Mississippi Bldg. & Loan Ass'n v. McElveen, 100 Miss. 16, 56 So. 187, 1911 Miss. LEXIS 9 (Miss. 1911).

A statute for the working of the public roads of a certain county was not repealed by a similar provision (§ 8, Code 1892). Madison County v. Collier, 79 Miss. 220, 87 Miss. 204, 30 So. 610 (Miss. 1905).

The repeal of statutes by implication is not favored, and when the earlier statute is particular, and the later general, and contains no negative words, the prior statute is not repealed, unless the repugnance is so great as to show clearly a legislative purpose to that effect. Madison County v. Stewart, 74 Miss. 160, 20 So. 857, 1896 Miss. LEXIS 114 (Miss. 1896).

In determining whether an act is local or general, within the meaning of a provision of this type, regard should be had to the substance and not the mere form given to the enactment. Mayor, etc., of Vicksburg v. Sun Mut. Ins. Co., 72 Miss. 67, 16 So. 257, 1894 Miss. LEXIS 75 (Miss. 1894).

A purely local act, devised to meet the needs of a single community, was not repealed by a similar provision (§ 8, Code of 1892). Jones v. Melchoir, 71 Miss. 115, 13 So. 857, 1893 Miss. LEXIS 70 (Miss. 1893); Adams v. Dendy, 82 Miss. 135, 33 So. 843, 1903 Miss. LEXIS 113 (Miss. 1903).

RESEARCH REFERENCES

Am. Jur.
73 Am. Jur. 2d, Statutes §§ 231 et seq.

CJS.
C.J.S. Statutes §§ 162, 170.

§ 1-1-31. Severability provision of Code of 1972.

If any chapter, article, section, paragraph, sentence, clause, phrase or any part of the Mississippi Code of 1972 is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining chapters, articles, sections, paragraphs, sentences, clauses and phrases shall be in no manner affected thereby but shall remain in full force and effect.

HISTORY: Codes, 1930, § 10; 1942, § 21.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes §§ 82-84.

§ 1-1-33. Code of 1972 supplied to officers.

Where any officer has received a set of the Mississippi Code of 1972 by virtue of his office and is required by law to deliver it to his successor in office, and the officer fails to deliver it to his successor, the successor may make application to the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, in writing, setting forth that fact, and the joint committee, if satisfied of the truthfulness of the application, may issue to the applicant a set of the Mississippi Code of 1972. The joint committee may consider any official application for a set of the Mississippi Code of 1972, and if the facts warrant furnishing a code or codes as applied for, it shall be furnished to the applicant.

HISTORY: Codes, 1942, § 4218; Laws, 1932, ch. 329; Laws, 1999, ch. 310, § 4, eff from and after passage (approved Mar. 8, 1999).

§ 1-1-35. Revised manuscript declared to be official Code of the state of Mississippi.

The Legislature finds and so declares that the code committee, comprised of the Attorney General, Secretary of State, chairmen of the appropriations committees and judiciary "A" and "B" committees of the House of Representatives and Senate has, to date, fulfilled its obligations and responsibilities within its statutory powers as set forth in Senate Bill No. 1964 (Chapter 465), Laws of 1970, and that the entire manuscript for the Mississippi Code of 1972, emanating from the Mississippi Code of 1930, all enactments of a general and permanent nature subsequent to the regular session of 1930 and through the regular session of 1942 comprising the original Mississippi Code of 1942, and all such enactments from adjournment of the 1942 regular session through the regular session of 1971 and now a part of the Mississippi Code of 1942, has been thoroughly analyzed by experienced and trained lawyer-editors of the lawbook publishers and by the publishers' computer facilities, and the publishers' findings and recommendations to the Attorney General to date have been agreed upon by and between the publishers, the Attorney General, and the code committee, and that said proposed manuscript, as prepared by The Lawyers Co-Operative Publishing Company and associates and approved by the attorney general, for the Mississippi Code of 1972, has been reported to the Legislature and revised, amended and adopted by the two houses of the Legislature, an enrolled draft of which has been prepared by the said code committee, said manuscript is hereby approved, adopted and declared to be the official code of the State of Mississippi on the first day of November, 1973.

HISTORY: Codes, 1942, § 21-06; Laws, 1972, ch. 394, § 1, eff from and after passage (approved April 26, 1972).

Cross References — Mississippi Code of 1972 as official code; recognition as evidence of public statute laws, see § 1-1-8.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes §§ 268, 269.

§ 1-1-37. Enrollment of the Code of 1972.

In the enrollment of the Code of 1972, it shall be sufficient and legal to enroll the code either by clipping the text from the original code or from other sources and attaching the same on paper approximately 81/2 X 11 inches, and/or by writing the same in longhand or typewriter, and/or by some method of photographic reproduction, and where necessary making corrections in the text before final approval and signature.

HISTORY: Codes, 1942, § 21-12; Laws, 1972, ch. 367, § 1, eff from and after passage (approved April 24, 1972).

Editor's Notes — The preamble to Chapter 394, Laws 1972, reads as follows:

"WHEREAS, Senate Bill No. 1964, Chapter 465, Laws of 1970, authorized and empowered the Attorney General and Secretary of State of the State of Mississippi with the written concurrence of the six (6) Chairmen of the Judiciary and Appropriations Committees of the House of Representatives and Senate, to enter into and execute a contract on behalf of the State of Mississippi with a competent company for a modern recodification and indexing of a 'Mississippi Code of 1972' with the most modern innovations to implement the Legislature's mandate; and

"WHEREAS, the Attorney General is charged under said Senate Bill No. 1964, with supervision and control of the publishing of said Code once the term of the contract was agreed upon and entered into between the State of Mississippi and the lawbook publishing company selected to do such work; and

"WHEREAS, Senate Bill No. 2144, Laws of 1970, appropriated the sum of Two Hundred and Fifty Thousand ($250,000.00) for the purpose of making progress payments on such Code printing contract for the fiscal year 1971, beginning July 1, 1970 and ending June 30, 1971; Senate Bill No. 1778, Laws of 1971, appropriated the sum of One Hundred and Fifty Thousand Dollars ($150,000.00) for the purpose of making additional progress payments on the Code printing contract for the fiscal year 1972, ending June 30, 1972; and

"WHEREAS, the public officials named in Senate Bill No. 1964 invited several nationally recognized lawbook publishing companies to submit their bids to said officials, and that after the officers painstakingly considered all bidders' propositions and their background, experience, reputation, financial stability, technical know how and related matters to make a factual determination as to which company had submitted the best, lowest and most responsible bid, found that the joint bid of The Lawyers Co-operative Publishing Company of Rochester, New York, and The Harrison Company of Atlanta, Georgia, in the amount of Seven Hundred Forty Six Thousand Seven Hundred and Fifty Dollars ($746,750.00) was the lowest and best responsible bid among those received by the Committee; and

"WHEREAS, the contract terms are exacting and detailed after first being thoroughly studied and amended by the Code Committee before it was executed on behalf of the State in October 1970 when a contract performance bond in the sum of Seven Hundred Forty Six Thousand Seven Hundred and Fifty Dollars ($746,750.00) was delivered to the Attorney General; and

"WHEREAS, the performance of the Code contract requires the skill of experienced and trained lawyer-editors of the publishing company, together with the use of the company's computerized procedures and a thorough analysis of the companies' conclusions and recommendations by the Attorney General; and

"WHEREAS, the publishers have assured the Code Committee and the Committee has determined that the progress of the contract is on schedule and its terms being fulfilled, and when completed will consist of a new twenty (20) volume Mississippi Code of 1972 and a two (2) volume new and greatly improved General Index and Statutory Distribution Tables, with volumes in numerical order, and with three (3) volumes to be distributed every two (2) months beginning ninety (90) days from the date this bill is enacted into law and with the General Index and Table Volumes to be distributed one (1) year after completion of the volumes containing the text and annotations to the new Code; and

"WHEREAS, the publishers have completely analyzed, by experienced and trained lawyer-editors and computerization procedures, each of more than sixteen thousand (16,000) sections of the Mississippi Code of 1942 and have now readied the entire manuscript of said sections by an orderly, rearranged, regrouped and logical development of the new Code by subject matter, titles, chapters, divisions and subdivisions into a completely new and flexible numbering system, all of which will provide the Legislature, attorneys, the courts and public officers greater ease and convenience in finding the statutory law; and

"WHEREAS, according to the terms of the contract, it will contain digest paragraphs of all pertinent decisions of the Supreme Court of Mississippi and of the federal courts sitting in Mississippi, construing Mississippi statutes, and of decisions of the United States Supreme Court which may affect the constitutionality or application of the Mississippi Code, Attorney General's opinions, references to American Law Reports up to the latest issued volume of the third series, and American Law Reports Federal, references to American Jurisprudence, Corpus Juris Secundum and to American Jurisprudence Proof of Facts, Pleading and Practice, Legal Forms and Trials; and

"WHEREAS, the publishers have greatly improved the present 1942 Code in numerous ways by removing redundancies and conflicts and by clarification of the law, but have not altered or changed the substantive Law of Mississippi in so doing; and

"WHEREAS, the Attorney General's staff and the Code Committee are satisfied that the contract terms and the revised manuscript of more than sixteen thousand (16,000) sections does not constitute "legislation", and all of the herein referenced recodification and improvements are well within the purview of the enabling act, Senate Bill No. 1964, Laws of 1970 and, the terms of the publishing contract and said Code Committee has indicated its final acceptance of said recodification by its approval in writing."

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 56.

§ 1-1-39. Deposition and preservation of enrolled draft.

The enrolled draft of the official Mississippi Code of 1972 shall be deposited in the office of the Secretary of State, and shall be carefully preserved by that officer as the official code of the public statute laws of this state, adopted and declared to be such by Section 1-1-35.

HISTORY: Codes, 1942, § 21-07; Laws, 1972, ch. 394, § 2, eff from and after passage (approved April 26, 1972).

SUPPLEMENTATION OF CODE OF 1972 AND UPDATE OF COMPUTER TAPES

Sec.	
1-1-51.	Repealed.
1-1-53.	Repealed.
1-1-55.	Repealed.
1-1-57.	Purchase and distribution of pocket part supplements and replacement bound volumes.
1-1-58.	Advance sheets; contract for publication; distribution; provision of information to publisher.
1-1-59.	Provision and maintenance of Code in electronic form.
1-1-60.	Requisitions from University of Mississippi law school; publication exchanges with other states.
1-1-61.	Repealed.
1-1-62.	Number of volumes, supplements, and advance sheets required.

§ 1-1-51. Repealed.

Repealed by Laws, 1996, ch. 502, § 9, eff July 1, 1998.

§ 1-1-51. [Laws, 1973, ch, 366, § 1; Laws, 1996, ch. 502, § 9, eff from and after passage (approved April 11, 1996)].

Editor's Notes — Former § 1-1-51 authorized the Attorney General and Secretary of State to jointly contract with a reputable and competent publishing company to annually digest, compile, annotate, index and publish acts of the Mississippi Legislature since adjournment of the 1971 legislative session and was repealed by its own terms on July 1, 1998. For present provisions, see § 1-1-107.

§ 1-1-53. Repealed.

Repealed by its own terms, effective July 1, 1998.

§ 1-1-53. [Laws, 1973, ch. 366, § 2; Laws, 1996, ch. 502, § 10, eff from and after passage (approved April 11, 1996).]

Editor's Notes — Former § 1-1-53 pertained to the requirement that a manuscript of compiled and annotated acts from each regular session of the Legislature be submitted to the Attorney General for approval. For present provisions regarding publication of legislative acts, see §§ 1-1-101 et seq.

§ 1-1-55. Repealed.

Repealed by operation of law on July 1, 1998.

§ 1-1-55. [Laws, 1973, ch. 366, § 3; Laws, 1979, ch. 323, § 1; Laws, 1996, ch. 502, § 11, eff from and after passage (approved April 11, 1996).]

Editor's Notes — Former § 1-1-55 provided for the printing of the approved manuscript of compiled and annotated acts from each regular Legislative session in insertable pocket supplement form or replacement bound volumes. For present provisions regarding publication of legislative acts, see §§ 1-1-101 et seq.

§ 1-1-57. Purchase and distribution of pocket part supplements and replacement bound volumes.

The Joint Committee on Compilation, Revision and Publication of Legislation shall purchase such numbers of sets of the pocket part supplements and the replacement volumes, including index replacement volumes, as may be required to maintain in a current status the sets of the Code of 1972 authorized to be furnished under the provisions of Section 1-1-11, and shall distribute or provide for the distribution of the same to the proper parties. In furtherance of the State Library's reciprocal program of Code exchange with libraries of the several states, the joint committee shall, at the direction and only upon the written request of the State Librarian, distribute or provide for the distribution of those supplements and replacement volumes to such libraries.

HISTORY: Laws, 1973, ch. 366, § 4; Laws, 1979, ch. 323, § 2; Laws, 1996, ch. 502, § 12; Laws, 1998, ch. 546, § 4, eff from and after July 1, 1998.

Cross References — Joint legislative committee on compilation, revision and publication of legislation, see § 1-1-101 et seq.

RESEARCH REFERENCES

CJS.

C.J.S. States §§ 137, 138.

§ 1-1-58. Advance sheets; contract for publication; distribution; provision of information to publisher.

(1) The Joint Committee on Compilation, Revision and Publication of Legislation shall contract with a publishing company for the publication of the advance sheets of the general laws enacted at each session of the Legislature. This contract may be with the same publishing company contracted with under Section 1-1-107(a) and may be included as a provision of that contract with the publishing company instead of being a separate contract.

(2) The joint committee shall distribute or provide for the distribution of the advance sheets to the proper parties. One (1) volume of the advance sheets shall be provided free of cost to each state government agency, to each respective Legislative Services Office of the House of Representatives and the Senate, to the Legislative Reference Bureau, and to each sheriff, chancery clerk, circuit clerk, superintendent of education, tax assessor, county prosecuting attorney, justice court judge, attorney for each county's board of supervisors, each municipal clerk, district attorney, circuit judge, chancellor, county court judge and Supreme Court judge. The joint committee shall authorize the publishing company to make copies of the advance sheets available to each member of the Mississippi Bar Association in good standing, according to the records of the secretary of the Mississippi Bar Association, at a reasonable cost, including preparation, printing, shipping and handling.

(3) The Office of the Secretary of State shall provide or make available to the publishing company such information regarding the general laws enacted by the Legislature as necessary for the publishing company to prepare and publish the advance sheets.

HISTORY: Laws, 1998, ch. 546, § 5, eff from and after July 1, 1998.

Cross References — Mississippi Code of 1972 as official code; recognition as evidence of public statute laws, see § 1-1-8.

§ 1-1-59. Provision and maintenance of Code in electronic form.

The Joint Committee on Compilation, Revision and Publication of Legislation may contract with a reputable and competent company to perform any services necessary to update any computer tape, disc or other technological medium furnished with the Mississippi Code of 1972, and to provide for and update a CD-ROM (compact disc, read-only memory) or other disc or technological medium containing the Mississippi Code of 1972 and its annotations, so that all laws of a general nature passed by the Legislature subsequent to the 1971 Session thereof will be incorporated therein in the same format as the pocket part supplements and supplemental material contained in replacement volumes to the Code of 1972. This contract may be made with the same publishing company contracted with under Section 1-1-107(a) and may be included as a provision of that contract with the publishing company instead of being a separate contract.

If the same cannot be contracted for, at and for a consideration considered reasonable, the joint committee may request the Mississippi Department of Information Technology Services to perform such services and pay over to the department such sums as may be appropriated for such purposes, and the Mississippi Department of Information Technology Services may expend such sums as paid over for the employment of personnel and the purchase of such services, supplies, materials and equipment as may be required to perform the work.

HISTORY: Laws, 1973, ch. 366, § 5; Laws, 1979, ch. 323, § 3; Laws, 1996, ch. 502, § 13; Laws, 1998, ch. 546, § 6, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am. Jur.
41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

CJS.
C.J.S. States §§ 152, 153.

§ 1-1-60. Requisitions from University of Mississippi law school; publication exchanges with other states.

The dean of the law school of the University of Mississippi may make requisitions to the Joint Committee on Compilation, Revision and Publication of Legislation for the Mississippi Code and supplements thereto to exchange with other states for similar publications and make the same available in the University of Mississippi law school library for the purpose of increasing the facilities of the library. The joint committee may furnish or provide for the furnishing of these publications upon requisition from the dean of the law school of the University of Mississippi.

HISTORY: Laws, 1998, ch. 546, § 7, eff from and after July 1, 1998.

§ 1-1-61. Repealed.

Repealed by Laws, 1996, ch. 502, § 21, eff from and after passage (approved April 11, 1996).

§ 1-1-61. [Laws, 1973, ch. 366, § 6]

Editor's Notes — Former § 1-1-61 was entitled: Statute retrieval system to be installed and maintained and made available to legislature and public officers, offices and agencies. For present provisions, see § 1-1-59.

§ 1-1-62. Number of volumes, supplements, and advance sheets required.

The Joint Committee on Compilation, Revision and Publication of Legislation shall provide for the publication of sufficient volumes of the Mississippi Code and supplements thereto and advance sheets as necessary to meet the requirements of Sections 1-1-11, 1-1-57, 1-1-58 and 1-1-60.

HISTORY: Laws, 1998, ch. 546, § 8, eff from and after July 1, 1998.

JOINT LEGISLATIVE COMMITTEE ON COMPILATION, REVISION AND PUBLICATION OF LEGISLATION

Sec.	
1-1-101.	Legislative findings.
1-1-103.	Creation of Joint Legislative Committee on Compilation, Revision and Publication of Legislation; composition; appointment and compensation of members; chairman; attendance at meetings by proxies; transaction of business by committee; meetings; payment of expenses.
1-1-105.	Committee staff.
1-1-107.	General powers and duties of committee.
1-1-109.	Authority of committee relating to preparation of legislative acts for publication.
1-1-111.	Approval by committee of manuscript of supplements and replacement volumes prepared by publishing company.

§ 1-1-101. Legislative findings.

The Legislature finds that the compilation, revision and publication of legislation enacted by the Legislature is a legislative function.

HISTORY: Laws, 1996, ch. 502, § 1, eff from and after passage (approved April 11, 1996).

§ 1-1-103. Creation of Joint Legislative Committee on Compilation, Revision and Publication of Legislation; composition; appointment and compensation of members; chairman; attendance at meetings by proxies; transaction of business by committee; meetings; payment of expenses.

(1) There is created the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, which is hereinafter referred to as the "joint committee." The joint committee shall be composed of the Speaker of the House of Representatives, the Lieutenant Governor of the State of Mississippi, the Speaker Pro Tempore of the House of Representatives, the President Pro Tempore of the Mississippi State Senate, the Chairman of the Rules Committee of the House of Representatives, the Chairman of the Senate Rules Committee, four (4) members of the House of Representatives to be named by the Speaker of the House, and four (4) members of the Senate to be named by the Lieutenant Governor. If any ex officio member of the joint committee holds two (2) positions entitling him to membership on the committee, the Speaker of the House or the Lieutenant Governor, as the case may be, shall appoint another member of the respective house to membership on the committee. The chairmanship of the committee shall alternate for twelve-month periods, beginning on May 1 of each year, between the Speaker of the House of Representatives and the Lieutenant Governor, with the Speaker of the House

of Representatives serving as the first chairman. In the absence of the Chairman of the House Rules Committee or of the Senate Rules Committee, the vice chairman of that committee shall be entitled to attend; if the vice chairman is unable to attend or if an appointed member is unable to attend, another legislator may be designated to attend by the Speaker of the House or the Lieutenant Governor, as the case may be. If the Speaker of the House or the Lieutenant Governor is unable to attend a meeting, he may designate a legislator to substitute for him at that meeting. Any person serving as such a designated proxy shall have a vote at the meeting he was selected to attend and also when attending, shall receive compensation and expenses in the same manner and amount as regular members of the joint committee.

There shall be no business transacted, including adoption of rules of procedure, without the presence of a quorum of the joint committee. A quorum shall be eight (8) members, to consist of four (4) members from the House of Representatives and four (4) members from the Senate. No action shall be valid unless approved by the majority of those members present and voting, entered upon the minutes of the joint committee and signed by the chairman and vice chairman.

(2) In addition to their legislative salaries as provided by law, the members of the committee shall receive per diem as authorized by law for their services in carrying out the duties of the committee and, in addition thereto, shall receive a daily expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations, including mileage as authorized by Section 25-3-41. However, in no case shall the members of the committee draw per diem while the Legislature is in regular or special session, except that members may receive the per diem and expenses authorized by this section when the Legislature is in session but in recess under the terms of a concurrent resolution, or in recess during a special session.

(3) The committee shall meet at least one (1) time during the interim that the Legislature is not in regular session, and the chairman may call additional meetings at such times as he deems necessary or advisable.

(4) All expenses incurred by and on behalf of the committee shall be paid from funds appropriated therefor, or from a sum to be provided in equal portion from the contingency funds of the House of Representatives and the Senate.

(5) Upon the request of the joint committee, the Attorney General shall provide legal assistance or legal representation to the committee on any matter within the jurisdiction of the committee, including bringing suits on behalf of the committee and representing the committee in any suits brought against the committee.

HISTORY: Laws, 1996, ch. 502, § 2; Laws, 1998, ch. 546, § 1; Laws, 2009, ch. 483, § 3, eff from and after passage (approved Apr. 3, 2009).

Editor's Notes — Laws of 2011, ch. 506, § 2, provides:
"SECTION 2. On or before July 1 of each fiscal year, or at such other times as

necessary, the Clerk of the House of Representatives or the Secretary of the Senate ('the Legislature') shall submit a request to the State Fiscal Officer for the funds necessary to pay (a) the expenses of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, (b) the state's share of various assessments from legislative-related organizations, and (c) any other legislative-related expenses. The State Fiscal Officer shall transfer to the Legislature the amount or amounts as requested by the Legislature from the Secretary of State's Fund No. 3111. The State Fiscal Officer shall transfer such obligated funds in a timely manner as determined by the Legislature. The Legislature is authorized to escalate the appropriate budgets during the fiscal year by the respective amounts transferred and to expend those sums for the purposes authorized by law."

On April 26, 2011, the Governor vetoed Section 2 of Chapter 506, Laws of 2011.

On June 1, 2011, the Mississippi Attorney General issued the following opinion regarding the constitutionality of the Governor's partial veto of Chapter 506, Laws of 2011:

"Honorable Johnny W. Stringer
"Chairman, House Appropriations Committee
"P. O. Box 1018
"Jackson, MS 39215-1018

"Re: Partial veto under Section 73 of the Mississippi Constitution

"Dear Chairman Stringer:

"Attorney General Jim Hood received your request and assigned it to me for research and response.

"Issue Presented

"Does the Governor under his partial veto authority of Section 73 of the Mississippi Constitution of 1890 have authority to veto a section of a general bill that he asserts is an appropriation within the general bill, when that section does not meet the criteria for an appropriation bill under the Mississippi Constitution?

"Response

"No. House Bill No.1054 of the 2011 Regular Session, which is the subject of your request, is not an appropriation bill and is not subject to partial veto under Section 73 of the Mississippi Constitution of 1890.

"Background

"On April 26, 2011, the Governor returned House Bill No. 1054 to the House of Representatives with a partial veto message for Section 2 of the bill. House Bill No. 1054, which is generally known as the 'transfer bill,' is a bill that, among other things, provides for the transfer of state funds into certain accounts for use in the general fund appropriations process. The Governor said in his message that he was not concerned with the transfer components of the bill, but had concerns specifically with Section 2 of the bill.

"Applicable Law and Discussion

"Under the Mississippi Constitution of 1890 (hereinafter 'Mississippi Constitution'), the powers of government are divided between and among three separate and distinct departments, to wit, the legislative department, the executive department and the judicial department. Miss. Const. Art. 1, Sec. 1 (1890). No person belonging to one department is authorized to exercise core powers belonging to another department. Miss. Const. Art. 1, Sec. 2 (1890); Dye v. State ex rel. Hale, 507 So. 2d 332 at 343 (Miss. 1987); and Alexander v. State ex rel. Alain, 441 So. 2d 1329 (Miss. 1983).

"The enactment of laws is an exercise of legislative power, which is subject to the executive power of veto. The Mississippi Constitution authorizes two types of vetoes, one which is applicable to all bills and is total in nature and another which is applicable only to appropriation bills and is partial in nature.

"Section 72[1] authorizes the Governor to approve or disapprove, by way of veto, every bill that passes both houses of the Legislature:

"Every Bill which shall pass both Houses shall be presented to the Governor of the state. If he approve, he shall sign it; but if he does not approve, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large upon its Journal, and proceed to reconsider it. If after such reconsideration two-thirds (⅔) of that House shall agree to pass the Bill, it shall be sent, with the objections, to the other House, by which, likewise, it shall be reconsidered; and if approved by two-thirds (⅔) of that House, it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the Governor within five (5) days (Sundays excepted) after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevented its return, in which case such Bill shall be a law unless the Governor shall veto it within fifteen (15) days (Sundays excepted) after it is presented to him, and such Bill shall be returned to the Legislature, with his objections, within three (3) days after the beginning of the next session of the Legislature.

"In exercising the gubernatorial veto under Section 72, the Governor must veto the entire bill. There is no power to approve parts of a bill, while disapproving other parts.

"In contrast, Section 73 authorizes the Governor to veto parts and approve parts of any 'appropriation bill':

"The governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law.

"The power to approve parts of a bill, while vetoing or disapproving other parts of the same bill, is expressly limited to appropriation bills and may not be exercised with regard to other legislation. An attempt to partially veto any bill other than an appropriation bill would be outside the authority granted to the Governor under the Mississippi Constitution and would be an impermissible infringement of the powers of the Legislature.

"The Mississippi Supreme Court in *Fordice v. Bryan,* 651 So. 2d 998 (Miss. 1995), a case involving the exercise of a partial veto, stated:

"Article IV, Section 73 of the Mississippi Constitution of 1890 states: 'The governor may veto *parts* of any *appropriation bill*, and approve parts of the same, and the portions approved shall be law.' Miss. Const. art. IV, Section 73 (emphasis added). Therefore, the Governor is entitled to exercise his Section 73 veto power upon 'parts' of 'appropriation' bills, and only upon 'parts' of 'appropriation' bills. The Governor may not exercise the Section 73 partial veto power on revenue raising bond bills.

"In order for the bills to be susceptible to the Governor's Section 73 partial veto power, they must fix a definite maximum amount, Section 63, and not continue to be in force withdrawing money from the state treasury longer than two months after the expiration of the fiscal year ending after the meeting of the legislature at its next regular session, Section 64. 651 So. 2d 998, 1000.

"Although there is no definition of 'appropriation bill' in the Mississippi Constitution, there are mandatory requirements for appropriation bills contained therein. Section 63, which requires an appropriation bill to state the maximum sum authorized to be drawn from the State Treasury, states:

"No appropriation bill shall be passed by the legislature which does not fix definitely the maximum sum thereby authorized to be drawn from the treasury.

"Section 64, which provides that bills making appropriations out of the State Treasury only be in force no more than two months after the expiration of the fiscal year, states:

"No bill passed after the adoption of this Constitution to make appropriations of money out of the state treasury shall continue in force more than two months after the expiration of the fiscal year ending after the meeting of the legislature at its next regular session; nor shall such bill be passed except by the votes of a majority of all members elected to each house of the legislature.

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[1] Unless otherwise indicated all section numbers refer to sections of the Mississippi Constitution of 1890.

"Section 69 prescribes the contents of appropriation bills and prohibits the engrafting of other legislation therein and reads as follows:

"General appropriation bills shall contain only the appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds, and to support the common schools. All other appropriations shall be made by separate bills, each embracing but one subject. Legislation shall not be engrafted on the appropriation bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid.

"Section 68 provides that appropriation bills (and revenue bills) have precedence in the Legislature over all other business:

"Appropriation and revenue bills shall, at regular sessions of the legislature, have precedence in both houses over all other business, and no such bills shall be passed during the last five days of the session.

"Under the Joint Rules of the Senate and the House, appropriation bills and revenue bills are subject to deadlines during the legislative session which are different from other bills. See Joint Rule 40 (2011).

"In accordance with *Fordice v. Bryan, supra*, the validity of a partial veto under Section 73 depends on the nature of the bill itself, i.e., is House Bill No.1054 an appropriation bill subject to partial veto under Section 73 or is it a general bill subject only to the general veto provisions of Section 72? If House Bill No. 1054 is not an appropriation bill, then it is not subject to partial veto under Section 73.

"To determine whether House Bill No. 1054 is an appropriation bill, it is necessary (1) to examine and compare its provisions with the constitutional sections which prescribe the mandatory provisions of an appropriations bill and (2) to examine the legislative process in which House Bill No. 1054 came to be enacted, i.e., was House Bill No. 1054 handled procedurally as an appropriation bill?

"House Bill No.1054 contains no maximum amount which may be withdrawn from the Treasury as required by Section 63. House Bill No.1054 is not limited in duration to no more than two months after the expiration of the fiscal year as required by Section 64. Its contents are not limited to appropriations defraying the expenses of State government, paying interest on state bonds, and supporting the common schools as required by Section 69.

"In addition to not satisfying the constitutional requirements of appropriation bills, House Bill No.1054 contains provisions commonly seen in general bills. For example, House Bill No.1054 *inter alia* authorizes a half dozen transfers of funds making it similar to 'transfer bills' in previous legislative sessions, which were also treated procedurally by the Legislature as general bills. House Bill No.1059, 2010 Regular Session and House Bill No. 1505, 2009 Regular Session. In addition, House Bill No. 1054 authorizes the borrowing of special funds to offset any temporary cash flow deficiency in the Health Care Expendable Fund. It provides that certain funds held for veterans by the State Veterans Home shall be considered to be held in a fiduciary capacity for the benefit of the veterans. House Bill No.1054 also revises the time limit in which a resident of the coastal counties, whose residence was destroyed by Hurricane Katrina, must begin construction in order to not be required to meet current lot size requirements. These provisions are all similar in nature to other provisions commonly found in general bills.

"Section 2 of House Bill No. 1054, which was the subject of the Governor's veto message, reads as follows:

"On or before July 1 of each fiscal year, or at such other times as necessary, the Clerk of the House of Representatives or the Secretary of the Senate ('the Legislature') shall submit a request to the State Fiscal Officer for the funds necessary to pay (a) the expenses of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, (b) the state's share of various assessments from legislative-related organizations, and (c) any other legislative-related expenses. The State Fiscal Officer shall transfer to the Legislature the amount or amounts as requested by the Legislature from the Secretary of State's Fund No. 3111. The State Fiscal Officer shall transfer such obligated funds in a timely manner as determined by the Legislature. The Legislature is authorized to escalate the appropriate budgets during the fiscal year by the respective amounts transferred and to expend those sums for the purposes authorized by law.

"Briefly stated, Section 2 of House Bill No. 1054 authorizes the transfer of funds from the Secretary of State's Fund No. 3111,[2] the escalation of the Legislature's budget by amounts transferred from Fund No. 3111, and the payment of legislative expenses specified therein.

"While Section 2 of House Bill No. 1054 authorizes the expenditure of public funds, it does not do so within the framework of an appropriation bill. Appropriation bills are not the exclusive legislative vehicle for authorizing the expenditure of public funds. As you note in your letter of request, the Department of Finance and Administration is authorized by Section 7-1-255 of the Mississippi Code, a general law provision, to escalate its budget based on application fees it receives. Similarly, the Department of Audit is authorized by Section 7-7-81 (2) of the Mississippi Code, another general law provision, to escalate its budget based on funds deposited in the 'Auditor's Enhanced Accountability Fund.' Upon each agency's respective budget being escalated, these Code sections authorize the Department of Finance and Administration and the Department of Audit to expend available funds. No further action of the Legislature is necessary. You list thirteen other examples of escalation and expenditure authority by general laws in your letter.[3]

"In addition, bond bills, specifically found not to be appropriation bills in *Fordice v. Bryan,* supra, and, therefore, not subject to partial veto, typically authorize the expenditure of public funds after bonds are issued without any further act of the Legislature. Similarly, legislation establishing revolving funds, though not appropriation bills, generally authorize the expenditure of public funds without any further act of the Legislature.

"The provisions in Section 2 of House Bill No.1054 are similar to the general law escalation provisions mentioned above and the thirteen other general law examples referenced in your letter. Once the transfer of funds is made from Fund No. 3111 and the Legislature's budget is escalated, the Legislature is authorized to make expenditures from available funds.

"With regard to its procedural treatment by the Legislature, House Bill No.1054 was not afforded the precedence and deadlines applicable to appropriation bills. Instead, House Bill No. 1054 was subject to the deadlines applicable to general bills. The 'transfer bills' in previous legislative sessions, referred to above, were also treated procedurally by the Legislature as general bills.

"All of the comparisons of the constitutional requirements for appropriation bills with the contents of House Bill No. 1054 and the legislative procedure employed for enactment indicate that House Bill No. 1054 is a general bill, not an appropriation bill. The Governor, in his veto message, acknowledged that House Bill No. 1054 is a general bill. However, he characterizes House Bill No. 1054 as a general bill which contains an appropriation in Section 2 and, therefore, is subject to a partial veto.

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[2] Fund No. 3111 contains special funds which are generated by fees earned by the Secretary of State and the Legislature appropriates funds therefrom for some of the operations of the Secretary of State's office.

[3] See Sections 17-17-63(3), 21-35-31 (2), 27-19-44.2(2), 27-19-179(2), 27-103-303(4), 31-913,33- 15-311(2),37-151-25,45-39-5(4), 57-1-303(1)(a), 57-75-15(4)(b)-(m), 57-75-15(18)(b), and 69-46-7(1) and (2) of the Mississippi Code.

"We are unable to find any authority for the proposition that any bill which authorizes the expenditure of public funds is an appropriation bill for purposes of Section 73. On the contrary, it is clear under *Fordice v. Bryan, supra*, that a bill must meet the constitutional requirements set forth for appropriation bills in order to be subject to partial veto under Section 73. While the Governor was authorized to exercise his general veto authority under Section 72 with regard to House Bill No.1054, he was not authorized to exercise his partial veto authority under Section 73. An unconstitutional attempt of a partial veto is a nullity. *See Fordice v. Bryan, supra, and State v. Holder*, 76 Miss. 158, 23 So. 643 (1898).

"Conclusion

"It is the opinion of this office that House Bill No.1054 of the 2011 Regular Session is not an appropriation bill and, therefore, is not subject to partial veto under Section 73."

RESEARCH REFERENCES

CJS.

C.J.S. States §§ 51-54.

§ 1-1-105. Committee staff.

The Director of the House Legislative Services Office and the Director of the Senate Legislative Services Office shall assist the joint committee with regard to staffing the committee to the extent feasible. The joint committee shall appoint one (1) attorney employed by the House Legislative Services Office and one (1) attorney employed by the Senate Legislative Services Office to serve as co-counsel for the committee and as liaisons to the publishing company or companies with which the joint committee has contracted.

HISTORY: Laws, 1996, ch. 502, § 3, eff from and after passage (approved April 11, 1996).

§ 1-1-107. General powers and duties of committee.

The joint committee shall have the following powers and duties:

(a) To select and contract with a reputable and competent publishing company on such terms and conditions and at such prices as it may deem proper for the editing, printing, indexing, annotating, binding and publishing of all the acts of the Legislature passed since adjournment of the 1998 Session of the Mississippi Legislature and annually thereafter, provided that the expenditure of state funds shall be contingent upon the Legislature appropriating the necessary funds therefor. Nothing in Chapter 546, Laws of 1998 or in Chapter 502, Laws of 1996, shall be construed to render invalid or impair the obligations of any contract entered into on behalf of the State of Mississippi on or before September 30, 1988, and any revisions or modifications to such contract other than extending the contract beyond September 30, 1998, for any of the purposes set forth in Chapter 546, Laws of 1998 or in Chapter 502, Laws of 1996.

(b) To undertake such substantive revisions, recodifications and compilations of the Mississippi Code of 1972, and subsequent amendments thereto, as may be necessary or as may be directed by the Legislature.

(c) To formulate with the publishing company all the details associated with the codification of the laws enacted by the Mississippi Legislature.

(d) To review, approve or disapprove the work of the publishing company in preparing, supplementing, indexing or revising the Mississippi Code of 1972, or any volume, pocket part or portion thereof.

(e) To grant exclusive or nonexclusive publication and sales rights to the Mississippi Code of 1972, and subsequent amendments thereto, or portions thereof to the publishing company.

(f) In its discretion, to seek the advice and assistance of members and committees of the Mississippi Bar Association.

(g) To provide for the preparation and introduction of legislation containing its recommendations for the revisions in substance and form or both, or the repeal or amendment of statutes or portions thereof.

(h) To provide for procedures for the implementation or execution of its powers and duties.

(i) To take such other action or exercise such additional powers as may be necessary or convenient to carry out the purposes of this chapter.

HISTORY: Laws, 1996, ch. 502, § 4; Laws, 1998, ch. 546, § 20, eff from and after July 1, 1998.

Editor's Notes — For a complete list of statute sections affected by Laws, 1996, ch. 502, and Laws, 1998, ch. 546, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Contents of Mississippi Code of 1972, see § 1-1-7.

Mississippi Code of 1972 as official code; recognition as evidence of public statute laws, see § 1-1-8.

Contract for compilation, annotation, etc., of legislation enacted subsequent to 1971 session, see § 1-1-51.

Preparation of pocket part supplements and replacement bound volumes, see § 1-1-55.

Purchase and distribution of pocket part supplements and replacement bound volumes, see § 1-1-57.

Provision of Code and updates in electronic form, see § 1-1-59.

Powers of committee relating to preparation of legislative acts for publication, see § 1-1-109.

Approval by committee of manuscript of supplements and replacement volumes prepared by publishing company, see § 1-1-111.

§ 1-1-109. Authority of committee relating to preparation of legislative acts for publication.

In preparing the acts of the Legislature for publication in the Mississippi Code of 1972 after the adjournment of each session and without altering the sense, meaning or effect of the acts, the joint committee is authorized to:

(a) Correct the spelling of words;

(b) Change capitalization for the purpose of uniformity;

(c) Correct manifest typographical and grammatical errors;

(d) Substitute the proper code section number, chapter number, or other number or designation for the terms "this act," and similar words or phrases;

(e) Change cross-reference numbers to agree with renumbered chapters, code sections or portions of the Code;

(f) Substitute the proper calendar date for "the effective date of this chapter" and other phrases of similar import;

(g) Correct manifest errors in references to laws;

(h) Correct inaccurate references to the titles of officers, the names of departments or other agencies of the state, local governments, or the federal government, and such other name changes as are necessary to be consistent with the laws of the state;

(i) Insert or delete hyphens in words so as to follow correct grammatical usage;

(j) Change nouns from the singular to the plural or vice versa for purposes of style and grammar;

(k) Change punctuation for purposes of uniformity and consistency of style; and

(*l*) Integrate the amendments that may have been made in more than one (1) act of the Legislature in a single session to the same code section or provisions of law, so that all versions of the same code section or law that were enacted during a single session may become effective, if effectuating all such amendments is consistent with the intent of the Legislature.

HISTORY: Laws, 1996, ch. 502, § 5; Laws, 1998, ch. 546, § 21, eff from and after July 1, 1998.

Cross References — Mississippi Code of 1972 as official code; recognition as evidence of public statute laws, see § 1-1-8.

General powers and duties of committee, see § 1-1-107.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes §§ 59, 266.

§ 1-1-111. Approval by committee of manuscript of supplements and replacement volumes prepared by publishing company.

From and after July 1, 1998, the manuscript of acts of the Mississippi Legislature that have been edited, compiled, annotated and indexed by the publishing company holding the contract with the Joint Committee on Compilation, Revision and Publication of Legislation shall be submitted to the joint committee for its approval and acceptance after each regular session of the Legislature. Upon the approval and acceptance of the manuscript by the joint committee, the same shall be printed in insertable pocket supplement form or replacement bound volume or volumes where necessary, containing appropriate chapters, titles and subdivisions of titles.

HISTORY: Laws, 1996, ch. 502, § 6, eff from and after passage (approved April 11, 1996).

Cross References — Mississippi Code of 1972 as official code; recognition as evidence of public statute laws, see § 1-1-8.

Preparation of pocket part supplements and replacement bound volumes, see § 1-1-55.

Purchase and distribution of pocket part supplements and replacement bound volumes, see § 1-1-57.

Contract for compilation, annotation, etc., of legislation enacted subsequent to 1971 session, see § 1-1-107.

General powers and duties of committee, see § 1-1-107.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 266.

CHAPTER 3.

CONSTRUCTION OF STATUTES

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Sec.
1-3-81. Captions of title, chapter, article, subarticle, part or section of Mississippi Code of 1972.

§ 1-3-1. Application of chapter.

This chapter is applicable to every statute unless its general object, or the context of language construed, or other provisions of law indicate that a different meaning or application was intended from that required by this chapter.

RESEARCH REFERENCES

Am. Jur.
73 Am. Jur. 2d, Statutes §§ 231 et seq.

CJS.
C.J.S. Statutes § 308.

§ 1-3-3. Bond.

The term "bond," when used in any statute, shall embrace every written undertaking for the payment of money or acknowledgment of being bound for money, conditioned to be void on the performance of any duty or the occurrence of any thing therein expressed and subscribed, and delivered by the party making it, to take effect as his obligation, whether it be sealed or unsealed.

HISTORY: Codes, 1880, § 19; 1892, § 1501; 1906, § 1575; Hemingway's 1917, § 1342; 1930, § 1365; 1942, § 673.

Cross References — Surety bonds by state officials, see § 25-1-13 et seq.

JUDICIAL DECISIONS

1. In general.
Code 1880 § 19 (identical with this section), does not define the word "bond," but declares that where used in the Code it shall embrace such instruments as are therein mentioned. Other instruments may be bonds by virtue of the general laws of other statutes. McLeod v. State, 69 Miss. 221, 13 So. 268, 1891 Miss. LEXIS 130 (Miss. 1891).

RESEARCH REFERENCES

CJS.
C.J.S. Bonds §§ 2 to 4, 7.
C.J.S. Statutes § 335.

§ 1-3-4. Capital case, capital offense, capital crime, and capital murder.

The terms "capital case," "capital cases," "capital offense," "capital offenses," and "capital crime" when used in any statute shall denote criminal cases, offenses and crimes punishable by death or imprisonment for life in the state penitentiary. The term "capital murder" when used in any statute shall denote criminal cases, offenses and crimes punishable by death, or imprisonment for life in the state penitentiary.

HISTORY: Laws, 1974, ch. 576, § 1; Laws, 1977, ch. 458, § 6, eff from and after passage (approved April 13, 1977).

Cross References — Capital murder, defined, see § 97-3-19.

Punishment for murder or capital murder, see § 97-3-21.

Offense of aircraft piracy as punishable by death, see § 97-25-55.

Requirement that an indictment for capital murder state specifically the section of the code defining the offense alleged to have been committed, see § 99-17-20.

Separate sentencing proceeding to determine punishment in capital cases, see § 99-19-101 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jury sequestration.
3. Noncapital crimes.
4. Sufficiency of indictment.
5. Capital offense.

1. In general.

Trial judge's two comments that defendant's case was a "capital case" did not taint the jury because "capital case" included crimes punishable by life imprisonment, Miss Code Ann. § 1-3-4, and defendant was indicted on two counts of statutory rape, a crime for which life imprisonment was possible, Miss. Code Ann. § 97-3-65(2)(c); the trial judge never said defendant's case was a capital-murder case or a death-penalty case. Harrison v. State, 49 So. 3d 80, 2010 Miss. LEXIS 635 (Miss. 2010).

Pursuant to Miss. Code Ann. § 13-5-73, jurors in a capital case should be sworn to well and truly try the issue between the state and the prisoner, and a true verdict should be given according to the evidence and law, and because the crime of forcible rape was a capital crime under Miss. Code Ann. § 97-3-65(4)(a), defendant was entitled to have the capital oath administered to the jurors, but the trial judge failed to administer that oath; however, the capital oath given in the middle of the trial, together with the petit oath given at the beginning of defendant's trial, which were substantially the same, were sufficient to instruct the jury of their duty. Golden v. State, 968 So. 2d 378, 2007 Miss. LEXIS 530 (Miss. 2007), cert. dismissed, 977 So. 2d 343, 2008 Miss. LEXIS 111 (Miss. 2008).

Defendant contended that the indictment failed to charge all of the elements necessary to impose the death penalty under Mississippi law, but his argument failed because (1) pursuant to Miss. Code Ann. § 99-19-101(7), a jury only needed to find that defendant killed, and did not need a true mens rea; (2) under Miss. Code Ann. § 99-19-101(5), aggravating circumstances existed; and (3) there was no increase in the maximum penalty because the maximum penalty for killing while engaged in the commission of sexual battery was death as the crime was defined as capital murder under Miss. Code Ann. § 97-3-19(2)(e), and, pursuant to Miss. Code Ann. § 1-3-4, a capital murder was a crime punishable by death. Havard v. State, 928 So. 2d 771, 2006 Miss. LEXIS 90 (Miss. 2006), cert. denied, 549 U.S. 1119, 127 S. Ct. 931, 166 L. Ed. 2d 716, 2007 U.S. LEXIS 153 (U.S. 2007).

While the Parole Board was required to give public notice of an inmate's parole hearing under Miss. Code Ann. § 47-7-17 as the inmate's life sentence for armed robbery meant that he had been convicted of a capital offense, the inmate was not deprived of his due process rights because of the lack of hearing as the argument had not been raised in the lower court, and the inmate was not prejudiced by the lack of publication. Way v. Miller, 919 So. 2d 1036, 2005 Miss. App. LEXIS 471 (Miss. Ct. App. 2005).

Trial court did not err in refusing to allow defendant twelve peremptory challenges because robbery was a noncapital offense as provided in Miss. Code Ann. § 1-3-4 and Miss. Code Ann. § 97-3-73, therefore, Miss. Code Ann. § 99-17-3 and Miss. Unif. Cir. & County Ct. Prac. R.

10.01, the statutory and rules provisions which provide extra peremptory challenges to the venire in capital cases, were inapplicable. The jury was required to determine defendant's guilt on the principal offense and not to consider the prior convictions which brought into consideration his life sentence under the habitual offender statute, Miss. Code Ann. § 99-19-83(3). Jones v. State, 902 So. 2d 593, 2004 Miss. App. LEXIS 1011 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273, 2005 Miss. LEXIS 336 (Miss. 2005).

Fact that 3 defendants were jointly tried did not operate to increase number of peremptory challenges; defendants charged with murder were entitled to 12 peremptory challenges because this was capital case, and received more than statutorily mandated number when trial court increased number of challenges for each side to 15, upon denying defendants' motion for 36 challenges. Johnson v. State, 512 So. 2d 1246, 1987 Miss. LEXIS 2703 (Miss.), cert. denied, 484 U.S. 968, 108 S. Ct. 462, 98 L. Ed. 2d 402, 1987 U.S. LEXIS 4990 (U.S. 1987), overruled in part, Smith v. State, 986 So. 2d 290, 2008 Miss. LEXIS 339 (Miss. 2008).

All existing statutory procedural safeguards involving so-called "capital" crimes or offenses or "crimes of a serious nature" would still be in full force and effect, even though the death penalty had been removed from some of those offenses; in enacting this section, the legislature intended to retain these safeguards in all cases where the maximum sentence is life imprisonment. Wilburn v. State, 356 So. 2d 1173, 1978 Miss. LEXIS 2476 (Miss. 1978).

This section does not amend the constitutional definition of "capital offenses" (Article III § 29 Miss Const. of 1890) which includes only offenses for which the death penalty is permitted. Ex parte Dennis, 334 So. 2d 369, 1976 Miss. LEXIS 1924 (Miss. 1976).

2. Jury sequestration.

The mere fact that a charge against a defendant is one denominated as "capital" under Mississippi law does not confer upon the defendant an unwaivable right of sequestration of the jury, since Mississippi Uniform Circuit Court Criminal Rule 5.07 limits automatic sequestration to those cases in which the state actually seeks the death penalty. Griffin v. State, 492 So. 2d 587, 1986 Miss. LEXIS 2551 (Miss. 1986).

3. Noncapital crimes.

Appellant could not rely on Miss. Code Ann. § 99-19-101(6) to support her claim that her counsel had inadequately represented her in failing to investigate and present mitigating evidence during her sentencing hearing on her conviction for arson because § 99-19-101(6) concerned mitigating evidence presented to a jury in capital cases. Arson was not a "capital crime" as defined by Miss. Code Ann. § 1-3-4 because § 1-3-4 limited capital crimes to crimes punishable by death or imprisonment for life in the state penitentiary, and the maximum punishment for arson was 20 years in the penitentiary under Miss. Code Ann. § 97-17-1. Smith v. State, 880 So. 2d 1094, 2004 Miss. App. LEXIS 865 (Miss. Ct. App. 2004).

4. Sufficiency of indictment.

Defendant's conviction for capital rape in violation of Miss. Code Ann. § 97-3-65(1)(b) was proper because his indictment was not deficient since, although capital rape was not an element of the crime of which he was charged, that fact was of no consequence since the labeling of each count as "capital rape" was mere surplusage. Additionally, it could hardly have been stated that capital rape was a false statement since defendant's maximum possible punishment for a violation of Miss. Code Ann. § 97-3-65(1)(b) was imprisonment for life. Gordon v. State, 977 So. 2d 420, 2008 Miss. App. LEXIS 169 (Miss. Ct. App. 2008).

5. Capital offense.

Armed robbery is a capital offense. Horton v. State, 253 So. 3d 334, 2018 Miss. App. LEXIS 42 (Miss. Ct. App.), cert. denied, 252 So. 3d 595, 2018 Miss. LEXIS 390 (Miss. 2018).

Miss. Code Ann. § 97-3-21 was not unconstitutionally vague and did not apply to the inmate where the inmate confused parole with conditional release as: (1)

Miss. Code Ann. § 47-7-3(1)(f) prohibited parole for an inmate sentenced to life under Miss. Code Ann. § 99-19-101 for capital offenses; (2) since the inmate pled guilty to murder, carrying a life sentence, he was convicted of a capital offense as defined in Miss. Code Ann. § 1-3-4; and (3) the inmate was eligible to petition for conditional release at age 65 under Miss. Code Ann. § 47-5-139(1)(a). Higginbotham v. State, 114 So. 3d 9, 2012 Miss. App. LEXIS 595 (Miss. Ct. App. 2012), cert. denied, 116 So. 3d 1072, 2013 Miss. LEXIS 317 (Miss. 2013).

RESEARCH REFERENCES

CJS.

C.J.S. Bail. Release and Detention Pending Proceedings §§ 18 to 23.

C.J.S. Criminal Law §§ 9 to 12.

C.J.S. Homicide §§ 29 to 31, 42 to 44.

C.J.S. Statutes § 335.

Law Reviews.

Clark, Juveniles and the death penalty—a square peg in a round hole. 10 Miss. C. L. Rev. 169, Spring, 1990.

§ 1-3-5. Crime.

The term "crime," when used in any statute, shall mean any violation of law liable to punishment by criminal prosecution.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (26); 1857, ch. 64, art. 349; 1871, § 2856; 1880, § 3105; 1892, § 1502; 1906, § 1576; Hemingway's 1917, § 1343; 1930, § 1366; 1942, § 674.

Cross References — Definition of the term "felony," see § 1-3-11.

Definition of the term "infamous crime," see § 1-3-19.

Definition of the term "offense," see § 1-3-37.

Crimes and misdemeanors generally, see § 97-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 674] a misdemeanor is a "crime." "Crime" meaning any violation of law punishable by criminal prosecution. Lewis v. State, 85 Miss. 35, 37 So. 497, 1904 Miss. LEXIS 129 (Miss. 1904).

RESEARCH REFERENCES

CJS.

C.J.S. Criminal Law §§ 2 to 8, 13.

C.J.S. Statutes § 335.

§ 1-3-7. Drugs.

The term "drugs," when used in any statute, shall embrace all medicines for internal or external use for man or beast.

HISTORY: Codes, 1906, § 1577; Hemingway's 1917, § 1344; 1930, § 1367; 1942, § 675.

Cross References — Uniform Controlled Substances Law, see § 41-29-101 et seq.

JUDICIAL DECISIONS

1. In general.

Use of microwave diathermy, electrical muscle stimulators and ultra sound equipment by chiropractor constituted practice of medicine without a license; nor was use of such modalities protected under chiropractic licensing statute where it made no express provision therefor and where it seemed likely that the legislature, had it intended to allow the use of such hazardous modalities by chiropractors, would have provided for substantially the same safeguards that underlie the use of X-ray machines by chiropractors; the recommending or prescribing of vitamins by a chiropractor also constituted the unlicensed practice of medicine where, by definition, the use of drugs was prohibited to chiropractors and where vitamins, which are a medicine, fell within the statutory definition of the term "drugs." Norville v. Mississippi State Medical Asso., 364 So. 2d 1084, 1978 Miss. LEXIS 2232 (Miss. 1978).

RESEARCH REFERENCES

ALR.

What are a "drug," a "device," and a "new drug" within the definitions of these terms in § 201(g)(1), (h), and (p) of the Federal Food, Drug, and Cosmetic Act as amended (21 USCS § 321(g)(1), (h) and (p)). 3 A.L.R. Fed. 843.

CJS.

C.J.S. Drugs and Narcotics §§ 2 to 5, 8, 29, 118 to 119.

C.J.S. Statutes § 335.

§ 1-3-9. Established.

The term "established" or "hereafter established" when used in any legislative act or municipal ordinance or resolution shall mean with reference to time the date at which the plant, building or structure referred to has progressed to that degree of completion as to be ready for the use intended.

HISTORY: Codes, 1930, § 1368; 1942, § 676.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 335.

§ 1-3-11. Felony.

The term "felony," when used in any statute, shall mean any violation of law punished with death or confinement in the penitentiary.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (24); 1857, ch. 64, art. 348; 1871, § 2855; 1880, § 3104; 1892, § 1503; 1906, § 1578; Hemingway's 1917, § 1345; 1930, § 1369; 1942, § 677.

Cross References — Crimes and offenses generally, see § 97-1-1 et seq.

Sentences in capital cases of felon under age 16, see § 99-19-15.

JUDICIAL DECISIONS

1. In general.

A defendant's conviction for escape under § 97-9-45 constituted a "felony" and, therefore, he was properly sentenced as a habitual offender under § 99-19-83. Beckham v. State, 556 So. 2d 342, 1990 Miss. LEXIS 11 (Miss. 1990).

The use of the word "feloniously" in describing larceny is not merely descriptive of the grade of the offense, but is an essential ingredient of the crime. Austin v. State, 195 Miss. 317, 15 So. 2d 684, 1943 Miss. LEXIS 164 (Miss. 1943).

Affidavit charging that accused "did then and there unlawfully take, steal and carry away" certain personal property, was fatally defective for omitting the word "feloniously" in describing larceny, and such omission, going to the very essence of the offense, might be availed of for the first time on appeal. Austin v. State, 195 Miss. 317, 15 So. 2d 684, 1943 Miss. LEXIS 164 (Miss. 1943).

RESEARCH REFERENCES

CJS.

C.J.S. Criminal Law §§ 9 to 12.
C.J.S. Statutes § 335.

§ 1-3-13. Fertilizers.

All substances, chemicals and compounds commonly known as commercial fertilizers, and all manures, whether natural or artificial products, except animal excrement, cotton seed, and unmixed cotton seed products.

HISTORY: Codes, 1906, § 1579; Hemingway's 1917, § 1346; 1930, § 1370; 1942, § 678.

Cross References — Commercial fertilizers, generally, see § 75-47-1 et seq.

JUDICIAL DECISIONS

1. In general.

Cotton seed meal held fertilizer, but not other unmixed cotton seed products such as equal parts of pulverized hulls and pulverized kernels. Gilmore Puckett Grocery Co. v. J. Lindsey Wells Co., 103 Miss. 468, 60 So. 580, 1912 Miss. LEXIS 195 (Miss. 1912).

RESEARCH REFERENCES

CJS.

C.J.S. Agriculture § 89.
C.J.S. Statutes § 335.

§ 1-3-15. Food.

The term "food," when used in any statute, shall embrace every article used as food or drink by man.

HISTORY: Codes, 1906, § 1580; Hemingway's 1917, § 1347; 1930, § 1371; 1942, § 679.

Cross References — Establishment of food technology laboratory, see § 57-19-1 et seq.

Regulation of food, generally, see § 75-29-1 et seq.

RESEARCH REFERENCES

CJS.

C.J.S. Food § 1.

C.J.S. Statutes § 335.

§ 1-3-17. Gender, masculine to embrace the feminine.

Words in the masculine gender shall embrace a female as well as a male, unless a contrary intention may be manifest.

HISTORY: Codes, 1857, ch. 66, art. 7; 1871, § 2936; 1880, § 16; 1892, § 1524; 1906, § 1605; Hemingway's 1917, § 1372; 1930, § 1396; 1942, § 704.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 335.

§ 1-3-19. Infamous crime.

The term "infamous crime," when used in any statute, shall mean offenses punished with death or confinement in the penitentiary.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (25); 1857, ch. 64, art. 348; 1871, § 2855; 1880, § 3104; 1892, § 1504; 1906, § 1581; Hemingway's 1917, § 1348; 1930, § 1372; 1942, § 680.

Cross References — Definition of the term "felony," see § 1-3-11.

Crimes and offenses generally, see § 97-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

The words "in the penitentiary" used in § 680, do not mean just any penitentiary or "a" penitentiary, but refer to the Mississippi penitentiary, and the federal penitentiary would not be within their meaning. State ex rel. Muirhead v. State Board of Election Comm'rs, 259 So. 2d 698, 1972 Miss. LEXIS 1543 (Miss.), cert. denied, 409 U.S. 851, 93 S. Ct. 64, 34 L. Ed. 2d 94, 1972 U.S. LEXIS 1351 (U.S. 1972).

OPINIONS OF THE ATTORNEY GENERAL

One who has been convicted of the crime of aggravated assault and sentenced to time in the state penitentiary (even though a portion of the sentence was suspended) or who is convicted of any other "infamous crime" and has not received a pardon from the Governor is not eligible to hold the office of county supervisor or any other office of profit or trust. See Section 23-15-299. Shannon, April 6, 1995, A.G. Op. #95-0220.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes § 335.

§ 1-3-21. Infant.

The term "infant," when used in any statute, shall include any person, male or female, under twenty-one years of age.

HISTORY: Codes, 1892, § 1505; 1906, § 1582; Hemingway's 1917, § 1349; 1930, § 1373; 1942, § 681.

Cross References — Definition of the term "minor," see § 1-3-27.
Guardians and wards generally, see § 93-13-1 et seq.

JUDICIAL DECISIONS

1. In general.

Plaintiff's tort action based on events that occurred when he was 19 years old was timely as it was filed less than three years after his 21st birthday; removal of the disability of minority did not arise automatically upon the occurrence of specified events except for reaching the age of 21, and thus, plaintiff's emancipation did not trigger the automatic removal of disability of minority. Baker v. RR Brink Locking Sys., 721 F.3d 716, 2013 U.S. App. LEXIS 13884 (5th Cir. Miss. 2013).

Defendant was an infant, under the age of 21, at the time his motion for post-conviction collateral relief was denied. Thus, he had two years in which to file a timely appeal of his armed robbery conviction under Miss. R. App. P. 4(f). Haynes v. State, 906 So. 2d 762, 2004 Miss. App. LEXIS 1146 (Miss. Ct. App. 2004).

RESEARCH REFERENCES

ALR.
Inclusion or exclusion of the day of birth in computing one's age. 5 A.L.R.2d 1143.

CJS.
C.J.S. Infants §§ 1-3.
C.J.S. Statutes § 335.

§ 1-3-23. Insurrection.

The term "insurrection," when used in any statute, means an armed assembly of persons having intent to resist or subvert lawful authority.

HISTORY: Codes, 1892, § 1506; 1906, § 1583; Hemingway's 1917, § 1350; 1930, § 1374; 1942, § 682.

Cross References — Power of governor to call out militia to suppress insurrections, see § 7-1-5.
Punishment for treason, see § 97-7-67 et seq.

RESEARCH REFERENCES

ALR.
Prosecutions of inmates of state or local penal institutions for crime of riot. 39 A.L.R.4th 1170.

CJS.
C.J.S. Statutes § 335.

§ 1-3-24. Intellectual disability.

The term "intellectual disability," when used in any statute, means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior, originates before the age of eighteen (18) years, and refers to persons who were, are and continue to be diagnosed with mental retardation.

HISTORY: Laws, 2010, ch. 476, § 1, eff from and after passage (approved Apr. 1, 2010).

§ 1-3-25. Land.

The term "land," when used in any statute, shall include all corporeal hereditaments whatever, and any interest therein, whether an estate for years or a different estate.

HISTORY: Codes, 1857, ch. 66, art. 6; 1871, § 2935; 1880, § 15; 1892, § 1507; 1906, § 1584; Hemingway's 1917, § 1351; 1930, § 1375; 1942, § 683.

Cross References — Land and conveyances in general, see § 89-1-1 et seq.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes § 335.

§ 1-3-26. Minimum education program, minimum program, minimum foundation program.

Wherever the phrase "minimum education program," "minimum program" or "minimum foundation program" shall appear in the laws of this state, it shall be construed to mean the "Mississippi Adequate Education Program" created under Section 37-151-1 et seq.

HISTORY: Laws, 1997, ch. 612, § 29, eff from and after July 1, 2002.

Editor's Notes — Laws, 1997, ch. 612, was vetoed by the Governor on April 10, 1997. The veto was overridden at the 1st Extraordinary Session of 1997 on April 23, 1997.

§ 1-3-27. Minor.

The term "minor," when used in any statute, shall include any person, male or female, under twenty-one years of age.

HISTORY: Codes, 1892, § 1508; 1906, § 1585; Hemingway's 1917, § 1352; 1930, § 1376; 1942, § 684.

Cross References — Definition of the term "infant," see § 1-3-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Child support.

1. In general.

Illegitimate "minor" held not debarred from right to present cause for removal of disabilities of minority. Wilkerson v. Swayze, 147 Miss. 141, 113 So. 327, 1927 Miss. LEXIS 347 (Miss. 1927).

A "minor" is any person under twenty-one years of age and emancipation does not terminate such minority. Ray v. Kelly, 82 Miss. 597, 35 So. 165, 1903 Miss. LEXIS 184 (Miss. 1903).

2. Child support.

Chancery court did not abuse its discretion by declining to require a parent to provide post-majority financial support for the parent's child because Mississippi law did not vest the court with the authority to mandate that parents financially support their offspring post-majority. The duty imposed for a parent to support its child does not extend beyond the child's minority, which terminates when the child reaches twenty-one years of age. Hays v. Alexander, 114 So. 3d 704, 2013 Miss. LEXIS 324 (Miss. 2013).

RESEARCH REFERENCES

CJS.

C.J.S. Infants §§ 2 to 4.
C.J.S. Statutes § 335.

§ 1-3-29. Month.

The term "month," when used in any statute, means a calendar month, unless a contrary intention be expressed.

HISTORY: Codes, 1857, ch. 66, art. 3; 1871, § 2932; 1880, § 12; 1892, § 1509; 1906, § 1586; Hemingway's 1917, § 1353; 1930, § 1377; 1942, § 685.

JUDICIAL DECISIONS

1. In general.

Under statute providing maximum imprisonment for possession of intoxicating liquor, "month" meant calendar month, in computing which, time must be reckoned by looking at calendar and not by counting days. Where beginning is not coincident with first day of calendar month, month is computed to day numerically corresponding thereto in following month less one, if following month has so many days, and if not to last day thereof. Barnes v. State, 154 So. 544 (Miss. 1934).

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 335.
C.J.S. Time § 10.

§ 1-3-31. Navigable waters.

Except as otherwise provided in Section 27-109-1, all rivers, creeks and bayous in this state, twenty-five (25) miles in length, and having sufficient depth and width of water for thirty (30) consecutive days in the year to float a steamboat with carrying capacity of two hundred (200) bales of cotton, are navigable waters of this state and public highways.

HISTORY: Codes, 1906, § 1587; Hemingway's 1917, § 1354; 1930, § 1378; 1942, § 686; Laws, 1990 Ex Sess, ch. 45, § 141, eff from and after passage (approved June 29, 1990).

Cross References — Constitutional provisions against obstruction of navigable waters, see Miss. Const. Art. 4, § 81.

For another definition of navigable waters, see § 51-1-1.

Obstruction of navigable waters, see § 97-15-45.

JUDICIAL DECISIONS

1. In general.

Circuit court improperly ruled for a family in their action against the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP) because it erroneously applied the legal standard for reckless disregard under the Mississippi Torts Claim Act; the river constituted a public Mississippi waterway, and the MDWFP possessed both the authority to regulate the boating traffic on the river and the discretion to do so in a safe manner. Miss. Dep't of Wildlife, Fisheries, & Parks v. Webb, 248 So. 3d 823, 2017 Miss. App. LEXIS 217 (Miss. Ct. App. 2017), rev'd, 248 So. 3d 772, 2018 Miss. LEXIS 127 (Miss. 2018).

Navigable waters are those waters which are navigable in fact; those waters are navigable in fact which are navigable by loggers, fishermen and pleasure boaters. Ryals v. Pigott, 580 So. 2d 1140, 1990 Miss. LEXIS 694 (Miss. 1990), cert. denied, 502 U.S. 940, 112 S. Ct. 377, 116 L. Ed. 2d 328, 1991 U.S. LEXIS 6438 (U.S. 1991).

A river was navigable in fact, and therefore constituted public waters, where the customary mode of travel on the river was through small outboard motorboats, fishing boats, canoes, tubes and other pleasure craft, the customary mode of commerce and trade was providing facilities for hire where persons could rent such vessels, and the river was capable in its ordinary condition of supporting commercial fishing. Ryals v. Pigott, 580 So. 2d 1140, 1990 Miss. LEXIS 694 (Miss. 1990), cert. denied, 502 U.S. 940, 112 S. Ct. 377, 116 L. Ed. 2d 328, 1991 U.S. LEXIS 6438 (U.S. 1991).

In an action to quiet title and to enjoin trespass, wherein the defendants claimed a right to enter upon a stream located upon the land, where it was shown that the stream was only nine miles long, was obstructed at many points, and had never been used as a water highway for commercial or other traffic except that at the turn of the century logs had sometimes been floated down it, it was apparent that the stream was not a navigable waterway which the defendants as members of the general public were entitled to enter upon at will. Downes v. Crosby Chemicals, Inc., 234 So. 2d 916, 1970 Miss. LEXIS 1428 (Miss. 1970).

This section [Code 1942, § 686] does not enlarge the meaning of the term "navigable waters of the State" as used in Const. 1890, § 81. Culley v. Pearl River Industrial Com., 234 Miss. 788, 108 So. 2d 390, 1959 Miss. LEXIS 556 (Miss. 1959).

RESEARCH REFERENCES

CJS.

C.J.S. Navigable Waters § 1.

§ 1-3-33. Number, singular and plural.

Words used in the singular number only, either as descriptive of persons or things, shall extend to and embrace the plural number; and words used in the plural number shall extend to and embrace the singular number, except where a contrary intention is manifest.

HISTORY: Codes, 1857, ch. 66, art. 2; 1871, § 2931; 1880, § 11; 1892, § 1523; 1906, § 1604; Hemingway's 1917, § 1371; 1930, § 1395; 1942, § 703.

JUDICIAL DECISIONS

1. Interpretation.

Miss. Code Ann. § 11-1-60(2)(a) instituted a cap on noneconomic damages recoverable by "the plaintiff," and under Miss. Code Ann. § 1-3-33, words written in the singular were to be read in the plural; therefore, a cap on noneconomic damages applied to all plaintiffs who brought a wrongful-death action pursuant to Miss. Code Ann. § 11-7-13. Estate of Klaus v. Vicksburg Healthcare, LLC, 972 So. 2d 555, 2007 Miss. LEXIS 649 (Miss. 2007).

A thorough review of Miss. Code Ann. § 1-3-33 and the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., revealed that there was no contrary intent manifested by the Legislature that meant that the MTCA should be interpreted only in the singular manner; Miss. Code Ann. § 11-46-15(1) was interpreted by using singular or plural language. Miss. DOT v. Allred, 928 So. 2d 152, 2006 Miss. LEXIS 114 (Miss. 2006).

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 321.

§ 1-3-35. Oath.

The term "oath," when used in any statute, shall include the word "affirmation," in all cases where by law an affirmation may be substituted for an oath.

HISTORY: Codes, 1892, § 1510; 1906, § 1588; Hemingway's 1917, § 1355; 1930, § 1379; 1942, § 687.

Cross References — Oath or affirmation required for issuance of search warrant, see Miss. Const. Art. 3, § 23.

Oath of legislators, see Miss. Const. Art. 4, § 40.

Oath of office of judges, see Miss. Const. Art. 6, § 155.

Oath or affirmation of voter, see Miss. Const. Art. 12, § 242.

Oath of state officers except judges and legislators, see Miss. Const. Art. 14, § 268.

Definition of the term "sworn," see § 1-3-53.

RESEARCH REFERENCES

CJS.

C.J.S. Oaths and Affirmations §§ 1-3.

C.J.S. Statutes § 335.

§ 1-3-37. Offense.

The term "offense," when used in any statute, shall mean any violation of law liable to punishment by criminal prosecution.

HISTORY: Codes, 1892, § 1511; 1906, § 1589; Hemingway's 1917, § 1356; 1930, § 1380; 1942, § 688.

JUDICIAL DECISIONS

1. In general.

Action to recover penalty for violation of anti-trust law is civil rather than criminal. Dukate v. Adams, 101 Miss. 433, 58 So. 475, 1912 Miss. LEXIS 12 (Miss. 1912).

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 335.

§ 1-3-39. Person.

The term "person," when used in any statute, shall apply to artificial as well as natural persons; and when used to designate the party whose property may be the subject of offense, shall include the United States, this state, or any other state, territory, or country, and any county, city, town or village which may lawfully own property in this state; also all public and private corporations, as well as individuals.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (29); 1857, ch. 64, art. 350, ch. 66, art. 4; 1871, §§ 2857, 2933; 1880, §§ 13, 3106; 1892, § 1512; 1906, § 1590; Hemingway's 1917, § 1357; 1930, § 1381; 1942, § 689.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Artificial persons.
3. Natural persons.

1. In general.

Miss. Code Ann. §§ 27-25-501(h) and 27-25-701(i) show that a different meaning of "person" than that contained in Miss. Code Ann. § 1-3-39 was intended for the purposes of oil and gas severance taxation. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588, 2013 Miss. LEXIS 71 (Miss. 2013).

Const. 1890, § 26 does not limit state's visitorial powers over corporation. Cumberland Tel. & Tel. Co. v. State, 98 Miss. 159, 53 So. 489, 1910 Miss. LEXIS 48 (Miss. 1910).

2. Artificial persons.

Foreign corporations are persons within the meaning of attachment statutes. Snipes v. Commercial & Industrial Bank, 225 Miss. 345, 83 So. 2d 179, 1955 Miss. LEXIS 589 (Miss. 1955).

Where foreign corporations were doing business in Alabama, Tennessee and Mississippi, the foreign corporations were persons within the meaning of attachment statutes and they themselves could sue in the state and they are liable to be sued or proceeded against, by attachment or otherwise, as individual nonresident debtors may be sued or proceeded against. Snipes v. Commercial & Industrial Bank, 225 Miss. 345, 83 So. 2d 179, 1955 Miss. LEXIS 589 (Miss. 1955).

Word "person" may or may not include

the state and its subdivisions depending upon the language of the statute. City of Jackson v. State, 156 Miss. 306, 126 So. 2, 1930 Miss. LEXIS 169 (Miss. 1930).

Income of corporations held taxable as income of persons. Hattiesburg Grocery Co. v. Robertson, 126 Miss. 34, 88 So. 4, 1921 Miss. LEXIS 4 (Miss. 1921).

Generally where a statute deals with matters foreign to the ordinary functions of public corporations, the word "person" will not be held to embrace municipal corporations exercising a part of the state's sovereignty. Dollman v. Moore, 70 Miss. 267, 12 So. 23, 1892 Miss. LEXIS 84 (Miss. 1892).

3. Natural persons.

A depot agent who has been accustomed for many years to receive notices from the company, and under orders from his superior, to communicate them to the superintendent, is a proper "person" upon whom to serve notice of the assignment of wages by an employee. Illinois C. R. Co. v. Bryant, 70 Miss. 665, 12 So. 592, 1893 Miss. LEXIS 14 (Miss. 1893).

OPINIONS OF THE ATTORNEY GENERAL

A metropolitan sewer authority is not a person as defined by § 1-3-39 and, therefore, is not capable of entering into agreements for binding arbitration under § 11-15-1. Clark, Apr. 26, 2002, A.G. Op. #02-0184.

The West Rankin Metropolitan Sewer Authority does not have specific authority in its enabling legislation or general legislation to enter into binding arbitration agreements; however, it may seek amendment of the local and private act by the legislature to include the authority to enter into binding arbitration agreements in specific circumstances. Clark, June 7, 2002, A.G. Op. #02-0295.

A parochial school and/or church would come within the definition of a "qualified volunteer" and as such would enjoy the exemptions from liability provided by Miss. Code Ann. § 95-9-1 when providing the use of its buildings or other real property to the Red Cross, Catholic Charities, or other qualified volunteer organizations during an emergency. Compretta, March 16, 2007, A.G. Op. #07-00146, 2007 Miss. AG LEXIS 106.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 335.

§ 1-3-41. Personal property.

The term "personal property," when used in any statute, means all tangible and intangible personal property and shall include cash, goods, deposit accounts, chattels, effects, evidences of rights of action, and all written instruments, including promissory notes, by which any pecuniary obligation, or any right, title, or interest in any real or personal estate, shall be created, acknowledged, transferred, incurred, defeated, discharged, or diminished.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (27); 1857, ch. 64, art. 351; 1871, § 2858; 1880, § 3107; 1892, § 1513; 1906, § 1591; Hemingway's 1917, § 1358; 1930, § 1382; 1942, § 690; Laws, 2018, ch. 380, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment inserted "means all tangible and intangible personal property," "cash," "deposit accounts," and "including promissory notes."

Cross References — Definition of the term "property," see § 1-3-45.

JUDICIAL DECISIONS

1. In general.

Corporation's contract fees for minor repairs performed on water and sewer systems were exempt from taxation because the systems were considered personal property. Blount v. ECO Res., Inc., 986 So. 2d 1052, 2008 Miss. App. LEXIS 276 (Miss. Ct. App.), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 343 (Miss. 2008).

Refund of sales tax was partially ordered because the exemption under Miss. Code Ann. § 27-65-21(1)(a)(i) applied to the repairs of water and sewer systems; moreover, there was substantial evidence to support the finding that repairs to underground pipes were real property, while other repairs to movable items were to personal property. Blount v. ECO Res., Inc., 2007 Miss. App. LEXIS 780 (Miss. Ct. App. Nov. 20, 2007), op. withdrawn, sub. op., 986 So. 2d 1052, 2008 Miss. App. LEXIS 276 (Miss. Ct. App. 2008).

Pursuant to a divorce, the property settlement agreement provided that each party released the other party from all claims through the date of the agreement, and referenced civil or criminal actions; the claims that were the subject of the agreement were "choses in action," and the trial court properly held that the contractual agreement precluded the wife's suit for personal injuries based on a predivorce assault by the husband. Martinez v. Martinez, 860 So. 2d 1247, 2003 Miss. App. LEXIS 1151 (Miss. Ct. App. 2003).

In the context of a suit in equity involving personal property, venue is in the county where the property is located since the specific terms of Miss. Code Ann. § 11-5-1 prevail over the general terms of Miss. Rev. Stat. Ann. § 11-11-3 (1972). Guice v. Miss. Life Ins. Co., 836 So. 2d 756, 2003 Miss. LEXIS 56 (Miss. 2003).

Beneficial interest constitutes personal rather than real property where decedent only held right to certain proceeds from trust at time of death, distributed pro rata in accordance with trust provisions, although decedent and her heirs apparently retained vested remaindermen's interest in trust assets to come into existence at time of sale of trust property in toto, or at end of 99 years. Davis v. Davis, 507 So. 2d 24 (Miss. 1987).

Under decree allowing solicitor's fee for services in conducting partition suit, solicitor's right was "intangible property." Bank of Monticello v. L. D. Powell Co., 159 Miss. 183, 130 So. 292, 1930 Miss. LEXIS 356 (Miss. 1930).

Oral subscription for stock of more than $50 in value is void under statute of frauds unless paid for or delivered. Mayhaw Canning & Preserving Co. v. Cohen, 135 Miss. 378, 99 So. 896, 1924 Miss. LEXIS 35 (Miss. 1924).

Debt "personal property." First Nat'l Bank v. Ellison, 135 Miss. 42, 99 So. 573, 1924 Miss. LEXIS 20 (Miss. 1924).

Voucher for payment of money, not subject to enrolled judgment as "personal property" or "property," its negotiability being unaffected by such lien. R. F. Walden & Co. v. Yates, 111 Miss. 631, 71 So. 897, 1916 Miss. LEXIS 353 (Miss. 1916).

A deed to land is "personal" property and is subject to larceny, the common law having been changed by statute. State v. Hughes, 80 Miss. 609, 31 So. 963, 1902 Miss. LEXIS 278 (Miss. 1902).

RESEARCH REFERENCES

ALR.

What passes under term "personal property" in will. 31 A.L.R.5th 499.

CJS.

C.J.S. Property §§ 18-37.

C.J.S. Statutes § 335.

Law Reviews.

1981 Mississippi Supreme Court Review: Contract, Corporate, and Commercial Law. 52 Miss. L. J. 411, June 1982.

§ 1-3-43. Promissory note.

Every promise in writing whereby any person, firm or body politic or corporate promises or agrees to pay a sum of money or acknowledges the same to be due.

HISTORY: Codes, 1906, § 1592; Hemingway's 1917, § 1359; 1930, § 1383; 1942, § 691.

RESEARCH REFERENCES

CJS.
C.J.S. Bills and Note Letters of Credit §§ 2 to 22.
C.J.S. Statutes § 335.

§ 1-3-45. Property.

The term "property," when used in any statute, includes personal property as defined in Section 1-3-41 and also every estate, interest, and right, in lands, tenements, and hereditaments.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (28); 1857, ch. 64, art. 352; 1871, § 2859; 1880, § 3108; 1892, § 1514; 1906, § 1593; Hemingway's 1917, § 1360; 1930, § 1384; 1942, § 692.

Cross References — Computer crimes, see § 97-45-1 et seq.

JUDICIAL DECISIONS

1. In general.

Beneficial interest constitutes personal rather than real property where decedent only held right to certain proceeds from trust at time of death, distributed pro rata in accordance with trust provisions, although decedent and her heirs apparently retained vested remaindermen's interest in trust assets to come into existence at time of sale of trust property in toto, or at end of 99 years. Davis v. Davis, 507 So. 2d 24 (Miss. 1987).

Under decree allowing solicitor's fee for services in conducting partition suit, solicitor's right was "intangible property." Bank of Monticello v. L. D. Powell Co., 159 Miss. 183, 130 So. 292, 1930 Miss. LEXIS 356 (Miss. 1930).

Voucher for payment of money, not subject to enrolled judgment as "personal property" or "property," its negotiability being unaffected by such lien. R. F. Walden & Co. v. Yates, 111 Miss. 631, 71 So. 897, 1916 Miss. LEXIS 353 (Miss. 1916).

RESEARCH REFERENCES

Am. Jur.
63 Am. Jur. 2d, Property §§ 1-7, 31-44.

CJS.
C.J.S. Statutes § 335.

§ 1-3-47. Railroad.

Every person, firm, association of persons or company, whether incorporated or not, who shall own or operate a railroad as a common carrier.

HISTORY: Codes, 1906, § 1594; Hemingway's 1917, § 1361; 1930, § 1385; 1942, § 693.

JUDICIAL DECISIONS

1. In general.

If trustee could not operate railroad, state's remedy was by quo warranto not anti-trust law proceeding. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598, 1928 Miss. LEXIS 101 (Miss. 1928).

RESEARCH REFERENCES

CJS.

C.J.S. Railroads §§ 1-23.
C.J.S. Statutes § 335.

§ 1-3-49. State.

The term "state," when applied to different parts of the United States, shall, when used in any statute, extend to and include the District of Columbia and the several territories created or recognized by congress.

HISTORY: Codes, 1857, ch. 66, art. 5; 1871, § 2934; 1880, § 14; 1892, § 1515; 1906, § 1595; Hemingway's 1917, § 1362; 1930, § 1386; 1942, § 694.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 335.

§ 1-3-51. Stationery.

The term "stationery," as applied to purchases for the state, includes everything properly so called.

HISTORY: Codes, 1906, § 1596; Hemingway's 1917, § 1363; 1930, § 1387; 1942, § 695.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 335.

§ 1-3-53. Sworn.

The term "sworn," when used in any statute, shall include the word "affirmed," in all cases where by law an affirmation may be substituted for an oath.

HISTORY: Codes, 1892, § 1516; Laws, 1906, § 1597; Hemingway's 1917, § 1364; 1930, § 1388; 1942, § 696.

Cross References — Definition of the term "oath," see § 1-3-35.

RESEARCH REFERENCES

CJS.
C.J.S. Oaths and Affirmations §§ 1-3.

§ 1-3-55. United States.

The term "United States," when used in any statute, shall include the District of Columbia and the territories, as well as the states of the union.

HISTORY: Codes, 1857, ch. 66, art. 5; 1871, § 2934; 1880, § 14; 1892, § 1517; 1906, § 1598; Hemingway's 1917, § 1365; 1930, § 1389; 1942, § 697.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes § 335.

§ 1-3-57. Unsound mind.

The term "unsound mind," when used in any statute in reference to persons, shall include persons with an intellectual disability, persons with mental illness, and persons non compos mentis.

HISTORY: Codes, 1892, § 1518; 1906, § 1599; Hemingway's 1917, § 1366; 1930, § 1390; 1942, § 698; Laws, 2008, ch. 442, § 1; Laws, 2010, ch. 476, § 2, eff from and after passage (approved Apr. 1, 2010).

RESEARCH REFERENCES

ALR.
When Is Person, Other than One Claiming Posttraumatic Stress Syndrome or Memory Repression, Within Coverage of Statutory Provision Tolling Running of Limitations Period on Basis of Mental Disability. 23 A.L.R. 6th 697.

CJS.
C.J.S. Statutes § 335.

§ 1-3-58. Ward.

Whenever the term "ward" is used, it shall be liberally construed and held to include any and all persons under every form of legal disability, including, but not limited to, the disabilities of minority, intellectual disability, mental illness, unsound mind, alcoholism, addiction to drugs, and convicted felons.

HISTORY: Codes, 1942, § 398.5; Laws, 1972, ch. 408, § 2; Laws, 2008, ch. 442, § 2; Laws, 2010, ch. 476, § 3, eff from and after passage (approved Apr. 1, 2010).

Cross References — Guardians and conservators generally, see § 93-13-1 et seq.

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward §§ 1 et seq.

CJS.
C.J.S. Chemical Dependents § 4.
C.J.S. Guardian and Ward §§ 1, 2.
C.J.S. Infants §§ 1-5.
C.J.S. Statutes § 335.

§ 1-3-59. Will.

The term "will," when used in any statute, shall include codicils.

HISTORY: Codes, 1892, § 1519; 1906, § 1600; Hemingway's 1917, § 1367; 1930, § 1391; 1942, § 699.

Cross References — Wills generally, see § 91-5-1 et seq.

RESEARCH REFERENCES

CJS.
C.J.S. Wills §§ 1, 166, 214.

§ 1-3-61. Written.

The term "written," when used in any statute, may include, but is not limited to, printing, engraving, and lithographing. In all cases where the signature of any person is required by law, it shall always be the proper handwriting of such person, or, in case he be unable to write, his proper mark, unless a different form of legal signature is specified in another statute.

HISTORY: Codes, 1892, § 1520; 1906, § 1601; Hemingway's 1917, § 1368; 1930, § 1392; 1942, § 700; Laws, 2012, ch. 374, § 1, eff from and after passage (approved Apr. 17, 2012).

Cross References — Requirement that land be conveyed only by a writing, see § 89-1-3.
Signature on wills, see § 91-5-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Signatures.

1. In general.

Statute pertaining to signing of wills by a testator is not qualified by this section [Code 1942, § 700]. Sheehan v. Kearney, 82 Miss. 688, 21 So. 41, 1903 Miss. LEXIS 99 (Miss. 1903).

The effect of this section [Code 1942, § 700] is to make necessary the proper handwriting of the petitioner or his proper mark, whatever that is, if he cannot write. It must be signed by the petitioner himself. Ferguson v. Board of Sup'rs, 71 Miss. 524, 14 So. 81, 1893 Miss. LEXIS 106 (Miss. 1893).

2. Signatures.

This section [Code 1942, § 700] merely requires a signature to be an individual authorization and not be engraved, printed, or lithographed. Jones v. Minton, 244 Miss. 354, 141 So. 2d 564, 1962 Miss. LEXIS 454 (Miss. 1962).

A person may adopt the writing of another as his individual signature. Jones v. Minton, 244 Miss. 354, 141 So. 2d 564, 1962 Miss. LEXIS 454 (Miss. 1962).

Person acknowledging signature to deed adopts it. Simmons v. Dantzler, 152 Miss. 428, 118 So. 829, 1928 Miss. LEXIS 230 (Miss. 1928).

Wife, by acknowledgment and delivery of deed, held to have adopted mark appended thereto as her signature though it may have been made by another. Mallory v. Walton, 119 Miss. 396, 81 So. 113, 1919 Miss. LEXIS 14 (Miss. 1919).

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Based on Section 1-3-61 and the necessity to insure the integrity of the mail-in registration system, in order for there to be a valid registration, the witness signature on the mail-in registration form must be personally signed by one who is a registered voter of the county and not a candidate for public office all in accordance with Section 23-15-47. Gray, July 19, 1995, A.G. Op. #95-0499.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes § 335.

§ 1-3-63. Year.

The term “year,” when used in any statute, means a calendar year, unless a contrary intention be expressed.

HISTORY: Codes, 1857, ch. 66, art. 3; 1871, § 2932; 1880, § 12; 1892, § 1521; 1906, § 1602; Hemingway’s 1917, § 1369; 1930, § 1393; 1942, § 701.

Cross References — State’s fiscal year, see Miss. Const. Art. 4, § 115.
State’s political year, see Miss. Const. Art. 14, § 257.

JUDICIAL DECISIONS

1. In general.
“From year to year” in a contract made by the authorities of a municipality with a water company for supplying the city with water, the intent to authorize a contract of as great duration as twenty-five years is deducible. Light, Heat & Water Co. v. Jackson, 73 Miss. 598, 19 So. 771, 1895 Miss. LEXIS 173 (Miss. 1895).

RESEARCH REFERENCES

ALR.
What 12-month period constitutes “year” or “calendar year” as used in public enactment, contract, or other written instrument. 5 A.L.R.3d 584.

CJS.
C.J.S. Statutes § 335.
C.J.S. Time § 9.

§ 1-3-65. Construction of terms generally.

All words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning; but technical words and phrases according to their technical meaning.

HISTORY: Codes, 1857, ch. 66, art. 1; 1871, § 2930; 1880, § 10; 1892, § 1522; 1906, § 1603; Hemingway's 1917, § 1370; 1930, § 1394; 1942, § 702.

JUDICIAL DECISIONS

1. In general.

Under the statutory construction principles in Miss. Code Ann. § 1-3-65, the term "insured" in Miss. Code Ann. § 83-5-28 refers to a person involved in a contract with an insurer; the term does not have a technical meaning that would block the common interpretation that authorizing a person to act in a certain way also authorizes a person's agents to do so. Great Am. Ins. Co. v. Lowry Dev. LLC, 576 F.3d 251, 2009 U.S. App. LEXIS 15862 (5th Cir. Miss. 2009).

Where the amendment of a statute was prefaced with the instruction that the section was "amended to read as follows," the presence of that phrase indicated that the statute of limitation provision in the old section was not to be inferred or implied to exist in the amended version nor could inadvertence on the part of the legislature be imputed in the deletion, and failure to set forth a statute of limitations in the amended section resulted in the repeal of the prescriptive period. Lee v. Rhoden, 253 So. 2d 844, 1971 Miss. LEXIS 1233 (Miss. 1971).

In view of this section [Code 1942, § 702], the words "sell and convey" used in § 216, Code of 1930, with respect to the right of a county to dispose of real estate belonging to it which had ceased to be used for county purposes, must, in its commonly accepted as well as its technical meaning, be construed as passing the title of the county to another, as against the contention that they also included the word "lease." American Oil Co. v. Marion County, 187 Miss. 148, 192 So. 296, 1939 Miss. LEXIS 111 (Miss. 1939).

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 1-3-65, all words and phrases set forth in Mississippi statutes are used according to their common and ordinary meaning, but technical words and phases should be interpreted according to their technical meaning. Polles, Jan. 14, 1993, A.G. Op. #92-0911.

The meaning of the word "appropriation" as used in the context of Section 21-39-17 is not defined specifically, therefore one must construe words and phrases contained in a statute according to their common and ordinary meaning. Cochran, March 8, 1996, A.G. Op. #96-0063.

The term "foundation," as used in Miss. Code Ann. § 69-44-5, is not synonymous with, but may utilize services of, a bank or a banking institution's trust department. A foundation, as contemplated in the statute, would include a corporation or other similar entity organized and operated for the purposes set forth in that chapter, that is, to conduct a program of research, education and advertising designed to promote the corn industry in Mississippi. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 321.

§ 1-3-67. How time computed when a number of days is prescribed.

When process shall be required to be served or notice given any number of days, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a legal holiday, or any other day when the courthouse or the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or the clerk's office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

HISTORY: Codes, 1857, ch. 66, art. 8; 1871, § 2931; 1880, § 17; 1892, § 1525; 1906, § 1606; Hemingway's 1917, § 1373; 1930, § 1397; 1942, § 705; Laws, 1991, ch. 573, § 1, eff from and after July 1, 1991.

Cross References — Method of computing the number of days prescribed for performing an act, see Miss. Rule of Civil Proc. 6.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Saturdays, Sundays and Holidays.

1. In general.

Miss. R. Civ. P. 6(e) was not applicable to calculate the sixty-day appeal period for taxpayers' appeal of a ruling by the Mississippi Board of Tax Appeals. Pursuant to Miss. Code Ann. § 1-3-67, the sixty-day period began on the date the Board issued its ruling and had expired. Southside, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 277, 2014 Miss. LEXIS 570 (Miss. 2014).

Under the provisions of §§ 1-3-67 and 99-17-1, the date of a defendant's arraignment should be excluded and the date of trial should be included in determining whether a defendant has been tried more than 270 days after his arraignment in violation of § 99-17-1. Ransom v. State, 435 So. 2d 1169, 1983 Miss. LEXIS 2779 (Miss. 1983).

A sheriff's sale was in compliance with the ten day advertisement requirements of Code 1972 § 13-3-165, where the first notice was posted on November 14, 1975, and the sale occurred on November 24, 1975; the provisions of Code 1972 § 1-3-67 prescribe the applicable formula for computing such ten day period, in that the first day is to be excluded and the last included. Combs v. Adams, 350 So. 2d 41, 1977 Miss. LEXIS 2206 (Miss. 1977).

Where process was served upon the defendant on September 26, returnable to the following Monday, October 1, the first day of the court term, the requisite five days service was accomplished according to the time computation formula provided by Code 1972 § 1-3-67. Loftin & Woodard, Inc. v. Stone, 321 So. 2d 488, 1975 Miss. LEXIS 1537 (Miss. 1975).

Where appellant filed a motion for new trial on October 1st, 1955, and October 3, 1955, the motion was overruled, but supersedeas bond was not filed until January 3, 1956, the appeal was not perfected within the required ninety days and it would be dismissed for want of jurisdiction. Gulf, M. & O. R. Co. v. Forbes, 228 Miss. 134, 87 So. 2d 488, 1956 Miss. LEXIS 497 (Miss. 1956).

Case held triable at return term of circuit court where summons was served July 21 and made returnable August 20. Mississippi C. R. Co. v. Aultman, 173 Miss. 622, 160 So. 737, 1935 Miss. LEXIS 205 (Miss. 1935).

Suit begun Oct. 31, 1914, on judgment rendered Oct. 31, 1907, not barred, the first day being excluded. Hattiesburg Grocery Co. v. Tompkins, 111 Miss. 592, 71 So. 866, 1916 Miss. LEXIS 343 (Miss. 1916).

2. Saturdays, Sundays and Holidays.

Where a political party's executive committee set a hearing for September 22, and served the contestant with notice of the hearing on Monday, September 15, since the time for service under Miss. Code Ann. § 23-15-921 – five days – was less than seven days, pursuant to Miss. Code Ann. § 1-3-67, the intermediate Saturdays and Sundays were excluded, and the candidate was timely served. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

Where the courthouse and the office of the clerk were closed by authority of Code 1942, § 4062 on Saturday, the terminal day for giving an appeal bond from the judgment of the county court, and the clerk was not available in the courthouse on such day for filing and approving the appeal bond, that Saturday would not be counted in determining the 10 days within which an appeal had to be taken. Parkman v. Mississippi State Highway Com., 250 So. 2d 637, 1971 Miss. LEXIS 1188 (Miss. 1971).

If by the exclusion of the first day, the last day of a period allowed by law for taking a stated action in judicial proceedings, falls on a legal holiday, that terminal holiday should be excluded and the action may be taken on the following day, and if the following day is a Sunday, the time for taking the action must then be extended until the following Monday. Parkman v. Mississippi State Highway Com., 250 So. 2d 637, 1971 Miss. LEXIS 1188 (Miss. 1971).

If by the exclusion of the first day of the period in which a compensation claimant must file notice of appeal from decision of the Workmen's Compensation Commission's representative, the last day of the computation falls on Sunday, then the first day is counted and the last day is excluded, and by following this formula where the Compensation Commission's office is open for business on Saturdays until noon, a petition for review could not have been timely filed later than the date of the Saturday preceding the Sunday which constituted the 20th day. Scales v. Barry, 195 So. 2d 920, 1967 Miss. LEXIS 1467 (Miss. 1967).

Where time allowed for appeal from justice court expired on Sunday, last day must be excluded and first included, and therefore time expired on midnight of Saturday. Tripp Furniture Co. v. Cox, 160 Miss. 90, 133 So. 238, 1931 Miss. LEXIS 156 (Miss. 1931).

Defendant was served with copy of indictment and of special venire at least an entire day before trial, where copy served Saturday afternoon at 4 o'clock and venire was returnable and case called for trial the following Monday at 9 o'clock. Boatwright v. State, 120 Miss. 883, 83 So. 311, 1919 Miss. LEXIS 141 (Miss. 1919).

If a bond be required to be given within a designated number of days from a certain date, and if the last day falls upon Sunday, it must be excluded from the count, and the first day included. Nichols v. Kendrick, 76 Miss. 334, 24 So. 534, 1898 Miss. LEXIS 90 (Miss. 1898).

RESEARCH REFERENCES

CJS.

C.J.S. Time § 12.

§ 1-3-69. When a number of weeks is prescribed.

When publication shall be required to be made in some newspaper "for three (3) weeks," such publication shall be made once each week for three (3) successive weeks, and the time within which the noticed party is required to act or within which the noticing party may proceed shall be computed from the first date of publication. This rule shall furnish a guide for any similar case, whether the time required be more or less than three (3) weeks.

HISTORY: Codes, 1880, § 18; 1892, § 1526; 1906, § 1607; Hemingway's 1917, § 1374; 1930, § 1398; 1942, § 706; Laws, 1991, ch. 573, § 2, eff from and after July 1, 1991.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Execution sales.

1. In general.

The fact that service of process by publication, published four times at weekly intervals, in a suit by an attachment at law on the ground of nonresidence to collect an indebtedness, had not been completed for at least five days before the term of court, at which it was returnable, convened, did not render void the judgment rendered. Stevens v. Barbour, 193 Miss. 109, 8 So. 2d 242, 1942 Miss. LEXIS 98 (Miss. 1942).

Where first publication of notice of receiving bids and letting contract is made less than three weeks from date of letting, statute not complied with and contract void. State v. Wall, 98 Miss. 521, 54 So. 5, 1910 Miss. LEXIS 91 (Miss. 1910).

2. Execution sales.

Execution sale, although advertised once each week for three weeks pursuant to statute, held void where less than three weeks elapsed between first publication and sale. Vansant v. Dodds, 164 Miss. 787, 144 So. 688, 1932 Miss. LEXIS 254 (Miss. 1932).

Statute requiring advertisement of execution sales once each week for three weeks should be construed with statute defining meaning of requirement for three weeks' publication. Vansant v. Dodds, 164 Miss. 787, 144 So. 688, 1932 Miss. LEXIS 254 (Miss. 1932).

First day of publication is excluded and day of sale included. Donald v. Commercial Bank of Magee, 132 Miss. 578, 97 So. 12, 1923 Miss. LEXIS 92 (Miss. 1923).

Where more than one week elapsed between last notice and day of sale, sale was void. Planters' Mercantile Co. v. Braxton, 120 Miss. 470, 82 So. 323, 1919 Miss. LEXIS 110 (Miss. 1919).

Foreclosure notice published Oct. 8, 15, 22 and 29, followed by sale Nov. 2; and publication July 7, 14, 21 and 28, with sale July 31, was sufficient; less than a week elapsing between last notice and day of sale. Lake v. Castleman, 116 Miss. 175, 76 So. 877, 1917 Miss. LEXIS 304 (Miss. 1917).

Sale made July 21, pursuant to notices July 3, 10 and 17, was void. McSwain v. Young, 111 Miss. 686, 72 So. 129, 1916 Miss. LEXIS 370 (Miss. 1916).

OPINIONS OF THE ATTORNEY GENERAL

1991 amendment to Miss. Code Section 1-3-69 did not change publication requirements. Mitchell, May 26, 1993, A.G. Op. #93-0336.

RESEARCH REFERENCES

CJS.

C.J.S. Time § 11.

§ 1-3-71. Civil law to control computation of relationship unless otherwise provided.

In each and every statute of this state heretofore enacted, and now in effect, in which the phrase "kindred within the third degree" or "relationship within the third degree" is used, and in which no other rule is applied or indicated, the civil law rule in computing relationship shall govern.

HISTORY: Codes, 1930, § 1399; 1942, § 707; Laws, 1924, ch. 156.

RESEARCH REFERENCES

Am. Jur.
23 Am. Jur. 2d, Descent and Distribution § 60.

CJS.
C.J.S. Descent and Distribution § 29.

§ 1-3-73. Civil law to apply in construing.

The civil law rule of computing kinship or relationship is hereby adopted and shall hereafter control in this state where the computation of relationship or kinship, either by blood or marriage, is brought in question in construing any legislative enactment or statutory law in the State of Mississippi.

HISTORY: Codes, 1930, § 1400; 1942, § 708; Laws, 1924, ch. 156.

Cross References — Effect of relationship between judge and parties, see Miss. Const. Art. 6, § 165.

Prohibition against judge presiding at trial of cause where parties are related to him, see § 9-1-11.

Prohibition against nepotism by state, county, district or municipal officers, see § 25-1-53.

Descent and distribution generally, see § 91-1-1 et seq.

RESEARCH REFERENCES

Am. Jur.
23 Am. Jur. 2d, Descent and Distribution § 60.

CJS.
C.J.S. Descent and Distribution § 29.

§ 1-3-75. Petitions must be signed personally by petitioners.

All petitions presented to any governing body of the State of Mississippi, or any of its subdivisions, or municipalities thereof, must be signed personally by each petitioner; otherwise, said signature shall not be counted as a valid signature of such petition.

HISTORY: Codes, 1942, § 707.5; Laws, 1966, ch. 559, § 1, eff from and after passage (approved March 17, 1966).

JUDICIAL DECISIONS

1. Construction with other laws.

The requirement of this section that petitions be personally signed was properly applied to petitions filed pursuant to § 23-15-963 to contest the qualifications of a candidate for public office. Ladner v. Necaise, 771 So. 2d 353, 2000 Miss. LEXIS 228 (Miss. 2000).

§ 1-3-76. Procedures for contesting disqualification of signatures on petition requesting vote on matter affecting county or municipality.

When any petition is filed by qualified electors of a county or municipality requesting a vote on matters affecting all or any portion of a county or municipality, the certifying official shall post a list of all names disqualified from the petition and the reason for disqualification at the courthouse or city hall, as the case may be. A person whose signature has been disqualified by the certifying official may, within ten (10) days after said notice has been posted, appear before such certifying official and present evidence of his qualification accompanied by a notarized affidavit stating the reason that his signature is qualified for the petition. Based upon such information, the certifying official shall reconsider his disqualification and may allow the signature to be counted if such action appears justified.

HISTORY: Laws, 1987, ch. 441, eff from and after November 9, 1987 (the date the United States Attorney General interposed no objection to the addition of this section).

Editor's Notes — The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws, 1987, ch. 441, on November 9, 1987.

JUDICIAL DECISIONS

1. Applicability.

Circuit court did not err in ordering a candidate's name be placed on a ballot because a statutory "petition filed by qualified electors" was wholly separate and distinct from the statutory requirements where the candidate was merely seeking to have his name printed on the mayoral ballot and where there was no contradictory evidence presented to contest the elector affidavits before the election commission. Election Comm'n v. Wallace, 143 So. 3d 557, 2014 Miss. LEXIS 368 (Miss. 2014).

OPINIONS OF THE ATTORNEY GENERAL

County registrar is "certifying official" for purpose of certifying number of signatures of qualified electors on petitions calling for election pursuant to particular statute as well as on nominating petitions for candidates for public offices. Doggett Sept. 8, 1993, A.G. Op. #93-0644.

For purposes of a municipal election, the "certifying official" as provided in Section 1-3-76, is the city registrar. Kerby, August 23, 1996, A.G. Op. #96-0585.

RESEARCH REFERENCES

CJS.

C.J.S. Elections §§ 91, 98.

§ 1-3-77. General severability provision.

If any section, paragraph, sentence, clause, phrase or any part of any act passed hereafter is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

Unless the contrary intent shall clearly appear in the particular act in question, each and every act passed hereafter shall be read and construed as though the provisions of the first paragraph of this section form an integral part thereof, whether expressly set out therein or not.

JUDICIAL DECISIONS

1. Applicability.

Miss. Code Ann. § 27-7-15(4)(i), having been found to violate the dormant commerce clause under the internal consistency test, was modified by striking the phrase "under the provisions of this article" because this preserved legislative intent to include dividend income in the definition of income, while allowing an exemption to taxpayers who already had borne a tax in Mississippi or another state. And even if one part of the section might be unconstitutional or void, absent contrary intent, Mississippi's severability statute applies and the remaining parts remain in full force. Miss. Dep't of Revenue v. AT&T Corp., 202 So. 3d 1207, 2016 Miss. LEXIS 448 (Miss. 2016).

Because H.B. 1671, Reg. Sess. (Miss. 2006), indicated no contrary intent, Miss. Code Ann. § 1-3-77 was applicable, and the supreme court severed only the last sentences of H.B. 1671 §§ 3 and 4; the city was not disqualified from continuing to pursue this project or any other private legislation that might be necessary. Oxford Asset Partners, LLC v. City of Oxford, 970 So. 2d 116, 2007 Miss. LEXIS 575 (Miss. 2007).

RESEARCH REFERENCES

CJS.

C.J.S. Statutes §§ 82-84.

§ 1-3-79. Treatment of amendments to same section by different bills during single legislative session; effective dates.

(1) Except as otherwise provided in Section 1-1-109, whenever the same section of law is amended by different bills during the same session of the Legislature and the effective dates of the amendments to that section of law as specified in the bills are on different dates, the version of that section in each bill shall take effect on the effective date of the amendments to that section as specified in the bill, regardless of the dates on which the bills are approved by the Governor, become law without the Governor's signature, or are approved by the Legislature subsequent to a veto, and at the time that each version of that section takes effect, the version taking effect shall supercede all other versions of that section that took effect earlier, unless specifically provided otherwise in any of the bills amending that section.

(2) Except as otherwise provided in Section 1-1-109, whenever the same section of law is amended by different bills during the same session of the

Legislature and the effective dates of the amendments to that section of law as specified in the bills are on the same date, the version of that section in the bill that is approved by the Governor, becomes law without the Governor's signature, or is approved by the Legislature subsequent to a veto on the latest date shall supercede all other versions of that section, unless specifically provided otherwise in any of the bills amending that section.

(3) As used in this section, "section of law" or "section" means a section of the Mississippi Code of 1972, any other valid code of statutory laws of the State of Mississippi or the session laws of the Legislature.

HISTORY: Laws, 1993, ch. 421, § 1; Laws, 1996, ch. 502, § 14, eff from and after passage (approved April 11, 1996).

RESEARCH REFERENCES

Am. Jur.
73 Am. Jur. 2d, Statutes § 243.

CJS.
C.J.S. Statutes §§ 246, 397.

§ 1-3-81. Captions of title, chapter, article, subarticle, part or section of Mississippi Code of 1972.

(1) "Caption" means the words used to describe the substance of a title, chapter, article, subarticle, part or section of the Mississippi Code of 1972.

(2) Captions shall not constitute a part of the Mississippi Code of 1972 unless specifically so provided by law.

(3) The wording of captions that are not specifically provided to constitute law shall be editorial in nature and may be revised by a publisher of the code as the publisher deems appropriate. There shall be no exclusive right in any publisher of the code to the use of a caption that has appeared in any bill that is approved by the Governor, has become law without the Governor's signature, or is approved by the Legislature subsequent to a veto; captions that have appeared in such a bill shall be subject to editorial revision without legislative action.

HISTORY: Laws, 2010, ch. 506, § 43, eff from and after July 1, 2010.

CHAPTER 5.

SESSION LAWS AND JOURNALS

Sec.
1-5-1. Printing of general, local and private laws.
1-5-3. Disposition of general, local and private laws and journals of legislature; responsibility.
1-5-5. General laws and journals, local and private laws deposited in state law library.
1-5-7. Distribution of general laws and journals, and local and private laws free of charge.
1-5-9. Distribution of general laws of Legislature to judges of United States.
1-5-11. Publication of volumes of general, local and private laws and journals for sale; disposition of proceeds.
1-5-13. Repealed.
1-5-15. Repealed.
1-5-17. University law school to have books for exchange.
1-5-19. Publication and distribution of journals and laws.
1-5-21. Sale of excess volumes.
1-5-23. Repealed.
1-5-25. To receive certain books from the sheriffs and distribute them.

§ 1-5-1. Printing of general, local and private laws.

The Office of the Secretary of State shall provide for and may enter into contracts for the complete, accurate and timely printing of the general laws and the local and private laws passed at each session of the Legislature.

HISTORY: Codes, Hutchinson's 1848, ch. 19, art. 5(3); 1857, ch. 6, art. 13; 1871, § 119; 1880, § 205; 1892, § 4087; Laws, 1906, § 4639; Hemingway's 1917, § 7477; Laws, 1930, § 6937; Laws, 1942, § 4197; Laws, 1992, ch. 543, § 1; Laws, 1993, ch. 430, § 1; Laws, 1996, ch. 502, § 15; Laws, 1998, ch. 546, § 9, eff from and after July 1, 1998.

Cross References — How acts of legislature shall be printed, see § 31-1-15.

Delivery of acts of legislature to printer and maximum time allowed for printing, see § 31-1-17.

Proof sheets of printing work to be read by departments, see § 31-1-23.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 1-5-1 requires Secretary of State to submit copies of legislative acts for printing. Molpus, May 11, 1993, A.G. Op. #93-0342.

RESEARCH REFERENCES

CJS.

C.J.S. States § 84.

C.J.S. Statutes § 59.

§ 1-5-3. Disposition of general, local and private laws and journals of legislature; responsibility.

The Office of the Secretary of State shall be responsible for the disposition of the general laws, local and private laws and journals of the Legislature as provided for by law.

HISTORY: Codes, 1892, § 4088; 1906, § 4640; Hemingway's 1917, § 7478; 1930, § 6938; 1942, § 4198; Laws, 1992, ch. 543, § 2; Laws, 1993, ch. 430, § 2; Laws, 1996, ch. 502, § 16; Laws, 1998, ch. 546, § 10, eff from and after July 1, 1998.

Cross References — Furnishing of true copies of the journals of the legislature, see § 5-1-33.

Criminal alteration of bills of the legislature, see § 97-7-49 et seq.

RESEARCH REFERENCES

CJS.

C.J.S. States §§ 85, 86.

§ 1-5-5. General laws and journals, local and private laws deposited in state law library.

The Office of the Secretary of State shall provide five (5) volumes of the general laws and journals and five (5) volumes of the local and private laws of each session of the Legislature to the State Law Library.

HISTORY: Codes, 1857, ch. 6, art. 17; 1871, § 122; 1880, § 208; 1892, § 4089; 1906, § 4641; Hemingway's 1917, § 7479; 1930, § 6939; 1942, § 4199; Laws, 1989, ch. 321, § 2; Laws, 1992, ch. 543, § 3; Laws, 1993, ch. 430, § 3, eff from and after July 1, 1993.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 119.

§ 1-5-7. Distribution of general laws and journals, and local and private laws free of charge.

The Office of the Secretary of State shall distribute and transmit, free of cost, the general laws and journals of each session of the Legislature, as follows: One (1) volume of each to the following: Governor, Lieutenant Governor, Secretary of State, Attorney General, State Auditor, State Treasurer, Clerk of the Supreme Court, the Court of Appeals; Mississippi State University, Mississippi University for Women, Alcorn State University, University of Southern Mississippi, Delta State University, Jackson State University, Mississippi Valley State University, University of Mississippi and University of Mississippi School of Law; the sheriff of each county for the county law library; each member of the Legislature; the Secretary of the Senate; the Clerk of the House; each attorney employed in the Legislative Services Offices of the House of Representatives and the Senate; each legislative committee meeting room in the New Capitol; the Legislative Reference Bureau; the Legislative Budget Office; the Department of Archives and History; and the Library of Congress at Washington, D.C. The copies to be provided each sheriff, member of the Legislature and each attorney employed in the Legislative Services Offices of the House and Senate shall not be provided unless specifically requested by such sheriff, legislator or attorney in writing. The Office of the Secretary of State shall provide, free of cost, one (1) volume of the local and private laws to each attorney employed in the Legislative Services Offices of the House of Representatives and the Senate; each legislative committee meeting room in the New Capitol; and the Legislative Reference Bureau; however, the copies to be provided each attorney employed in the Legislative Services Offices of the House and Senate shall not be provided unless specifically requested by such attorney in writing.

In addition to the volumes provided to the Legislative Services Offices' attorneys under this section, four (4) volumes of the general laws, three (3) volumes of the local and private laws and two (2) volumes of the journal of the particular house involved shall be provided free of cost to the Legislative Services Offices of the House of Representatives and the Senate. Receipt of any number of volumes that are to be provided to the Legislative Services Offices and their attorneys under this section may be waived in writing by the Director of the Legislative Services Office of either house.

HISTORY: Codes, Hutchinson's 1848, ch. 19, art. 5 (6); 1857, ch. 6, art. 18; 1871, § 123; 1880, § 209; 1892, § 4090; 1906, § 4642; Hemingway's 1917, § 7480; 1930, § 6940; 1942, § 4200; Laws, 1938, ch. 215; Laws, 1940, ch. 317; Laws, 1978, ch. 458, § 5; Laws, 1988, ch. 486, § 2; Laws, 1992, ch. 543, § 4; Laws, 1993, ch. 430, § 4; Laws, 1993, ch. 518, § 9; Laws, 2004, ch. 473, § 1; Laws, 2010, ch. 376, § 2; Laws, 2012, ch. 390, § 1, eff from and after July 1, 2012.

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Secretary of State to receive all extra copies of acts of Legislature from sheriffs, see § 1-5-25.

Governor to transmit copies of the laws and documents, see § 7-1-15.

RESEARCH REFERENCES

CJS.

C.J.S. Statutes § 59.

§ 1-5-9. Distribution of general laws of Legislature to judges of United States.

The Secretary of State shall, in the same manner, further distribute one (1) copy of the general laws of the Legislature alone to each of the judges of the United States courts in this state.

HISTORY: Codes, Hutchinson's 1848, ch. 19, art. 5 (6); 1857, ch. 6, art. 18; 1871, § 123; 1880, § 209; 1892, § 4091; 1906, § 4643; Hemingway's 1917, § 7481; 1930, § 6941; 1942, § 4201; Laws, 1986, ch. 459, § 21; Laws, 1992, ch. 543, § 5, eff from and after July 1, 1992.

RESEARCH REFERENCES

CJS.
C.J.S. Statutes § 59.

§ 1-5-11. Publication of volumes of general, local and private laws and journals for sale; disposition of proceeds.

The Office of the Secretary of State shall provide for the publication of sufficient additional volumes of the general laws, local and private laws and journals not otherwise provided for by law, to be made available for sale at a reasonable cost, including preparation, printing, shipping and handling. The Office of the Secretary of State shall pay the proceeds of such sales into the State General Fund in the manner prescribed by law.

HISTORY: Codes, 1892, § 4095; 1906, § 4647; Hemingway's 1917, § 7485; 1930, § 6945; 1942, § 4205; Laws, 1989, ch. 321, § 3; Laws, 1992, ch. 543, § 6; Laws, 1993, ch. 430, § 5; Laws, 1996, ch. 502, § 17; Laws, 1998, ch. 546, § 11, eff from and after July 1, 1998.

Cross References — Sale of excess volumes, see § 1-5-21.

RESEARCH REFERENCES

CJS.
C.J.S. States §§ 85, 86.
C.J.S. Statutes § 59.

§ 1-5-13. Repealed.

Repealed by Laws, 1998, ch. 546, § 22, eff from and after July 1, 1998.

§ 1-5-13. [Codes, Hemingway's 1917, § 7498; 1930, § 6953; 1942, § 4213; Laws, 1914, ch. 204; Laws, 1948, ch. 424; Laws, 1992, ch. 543, § 7; Laws, 1993, ch. 430, § 6; Laws, 1996, ch. 502, § 18, eff from and after passage (approved April 11, 1996)]

Editor's Notes — Former § 1-5-13 related to publication and distribution of advance sheets of general laws. For present provisions, see § 1-1-58.

§ 1-5-15. Repealed.

Repealed by Laws, 1992, ch. 543, § 15, eff from and after July 1, 1992.

§ 1-5-15. [Codes, Hemingway's 1917, § 7499; 1930, § 6954; 1942, § 4214; Laws, 1914, ch. 204]

Editor's Notes — Former § 1-5-15 required the chancery clerks to paste copies of laws into a book maintained for that purpose to preserve acts of legislature.

§ 1-5-17. University law school to have books for exchange.

The dean of the law school of the University of Mississippi may make requisitions to the Secretary of State for the general session laws and journals of the Legislature to exchange with other states for similar publications and make the same available in the University of Mississippi law school library for the purpose of increasing the facilities of the library. The Secretary of State may furnish these publications upon requisition from the dean of the law school of the University of Mississippi.

HISTORY: Codes, 1942, § 4217; Laws, 1938, Ex. ch. 29; Laws, 1992, ch. 543, § 8; Laws, 1998, ch. 546, § 12, eff from and after July 1, 1998.

RESEARCH REFERENCES

CJS.

C.J.S. Colleges and Universities § 11.
C.J.S. Statutes § 59.

§ 1-5-19. Publication and distribution of journals and laws.

The Office of the Secretary of State shall provide for the publication of sufficient volumes of the House journal, Senate journal, general laws and local and private laws necessary to meet the requirements of this chapter.

HISTORY: Codes, 1942, § 4219; Laws, 1936, ch. 211; Laws, 1992, ch. 543, § 9; Laws, 1993, ch. 430, § 7; Laws, 1996, ch. 502, § 19; Laws, 1998, ch. 546, § 13, eff from and after July 1, 1998.

RESEARCH REFERENCES

CJS.

C.J.S. States §§ 85, 86.
C.J.S. Statutes § 59.

§ 1-5-21. Sale of excess volumes.

The Secretary of State may sell the volumes of the House journal, Senate journal, general laws, local and private laws and the Southern Reporter–Mississippi Cases in excess of the number thereof necessary for distribution or retention, the sale price for each volume to be the cost price of printing, binding and mailing. The funds realized by the Secretary of State from the sale of those excess volumes shall be paid by him into the State General Fund in the manner prescribed by law.

HISTORY: Codes, 1942, § 4220; Laws, 1936, ch. 211; Laws, 1992, ch. 543, § 10; Laws, 1998, ch. 546, § 14, eff from and after July 1, 1998.

Cross References — Sale of acts and journals, see § 1-5-11.

RESEARCH REFERENCES

CJS.
C.J.S. States §§ 263, 264.

§ 1-5-23. Repealed.

Repealed by Laws, 1992, ch. 543, § 15, eff from and after July 1, 1992.
§ 1-5-23. [Codes, 1942, § 4221; Laws, 1936, ch. 211]

Editor's Notes — Former § 1-5-23 provided prices for the sale of certain volumes of legislative journals.

§ 1-5-25. To receive certain books from the sheriffs and distribute them.

The Secretary of State shall receive from the several sheriffs all extra copies of the acts of the Legislature, which the sheriffs are required to return to him, and he shall see that the several sheriffs perform the duty required of them in this behalf. If there be less than ten copies of any of the acts, in the State Library, he shall supply the deficiency from the acts so returned to him, and out of the residue of the acts so returned, he shall, as far as can be, supply each county with the books needed to complete the set belonging to each respectively, and shall take the receipt of the sheriff therefor; and any books not thus disposed of shall be preserved in his office, and sold as other like books.

HISTORY: Codes, 1892, § 4100; 1906 § 4652; Hemingway's 1917, § 7490; 1930, § 6950; 1942, § 4210.

RESEARCH REFERENCES

CJS.
C.J.S. Sheriffs and Constables §§ 52-54, 66-71, 80, 88.
C.J.S. Statutes § 59.

TITLE 3.

STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

Chapter 1. State Sovereignty Commission [Repealed].
Chapter 3. State Boundaries, Holidays, and State Emblems. 3-3-1
Chapter 5. Acquisition of Land by United States Government. 3-5-1
Chapter 7. Compact for a Balanced Budget. 3-7-1

CHAPTER 1.

STATE SOVEREIGNTY COMMISSION [REPEALED]

Sec.
3-1-1 through 3-1-35. Repealed.

§§ 3-1-1 through 3-1-35. Repealed.

Repealed by Laws, 1977, ch. 320, § 1, eff from and after passage (approved March 4, 1977).

§§ 3-1-1 through § 3-1-35. [Codes, 1942, §§ 9028-31 through 9028-47; Laws, 1956, ch. 365, §§ 1-17]

Editor's Notes — Former §§ 3-1-1 through 3-1-35 created the State Sovereignty Commission and prescribed its powers and duties.

CHAPTER 3.

STATE BOUNDARIES, HOLIDAYS, AND STATE EMBLEMS

Sec.

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§ 3-3-1. Limits and boundaries of the territorial waters of the State of Mississippi.

The limits and boundaries of the territorial waters of the State of Mississippi shall consist of all territory included within the boundaries described in the act of Congress of March 1, 1817, together with all territory ceded to the State of Mississippi by later acts of Congress or by compacts or agreements with other states, as such territory and boundaries may have been or may be modified by the United States Supreme Court which extends three (3) miles of Cat Island, Ship Island, Horn Island and Petit Bois Island off shore to three (3) Marine Leagues.

HISTORY: Codes, 1857, ch. 2, art. 1; 1871, § 18; 1880, § 21; 1892, § 345; 1906, § 403; Hemingway's 1917, § 3817; 1930, § 3885; 1942, § 3020; Laws, 2013, ch. 398, § 1, eff from and after July 1, 2013.

Editor's Notes — There appears to be some missing text or a typographical error in the following excerpt from near the end of the section: ". . . which extends three (3) miles of Cat Island . . . . " The section is set out above as amended by Section 1 of Chapter 398, Laws of 2013.

Cross References — Constitutional provision permitting legislature to settle disputed boundaries, see Miss. Const. Art. 2, § 4.

JUDICIAL DECISIONS

1. In general.

Private plaintiffs having initiated action against private defendants in District Court to quiet title to property riparian to Mississippi River, Louisiana having filed a third-party complaint against Mississippi seeking to determine boundary between states, and District Court having denied leave to Louisiana to file bill and then finding land to be part of Mississippi uncompromising language of 28 USCS § 1251(a), which gives original and exclusive jurisdiction to Supreme Court over controversies between two or more States, deprived District Court of jurisdiction over Louisiana's third-party complaint. While District Court's adjudication of private action involving boundary did not violate section, adjudication of such action would not be binding on states in any way. However, because both District Court and Court of Appeals intermixed questions of title and location of boundary, matter would be remanded to determine whether, on record, claims of title may fairly be decided without additional proceedings in District Court. Mississippi v. Louisiana, 506 U.S. 73, 113 S. Ct. 549, 121 L. Ed. 2d 466, 1992 U.S. LEXIS 7977 (U.S. 1992).

The Supreme Court will take judicial knowledge of the territorial boundaries of the state. Graham v. State, 196 Miss. 382, 17 So. 2d 210, 1944 Miss. LEXIS 204 (Miss. 1944).

Resolution of disagreement between United States, Mississippi and Alabama with respect to state borders, in connection with waters of Mississippi Sound. United States v. Louisiana, 507 U.S. 7, 113 S. Ct. 1238, 122 L. Ed. 2d 381, 1993 U.S. LEXIS 1763 (U.S. 1993).

See Louisiana v. Mississippi, 202 U.S. 1, 26 S. Ct. 408, 50 L. Ed. 913, 1906 U.S. LEXIS 1516 (U.S. 1906).

Jurisdiction of counties bordering the Mississippi river, and courts thereof, extends to the center or thread of the stream. Cook v. State, 81 Miss. 146, 32 So. 312, 1902 Miss. LEXIS 107 (Miss. 1902).

§ 3-3-3. How state divided into counties.

The State of Mississippi is divided into the following counties, to wit: Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo, which are bounded as described in Chapter 1 of Title 19 of this Code.

HISTORY: Codes, 1857, ch. 2, art. 3; 1871, § 19; 1880, § 22; 1892, § 346; 1906, § 404; Hemingway's 1917, § 3818; 1930, § 3886; 1942, § 3021.

Cross References — County boundaries, see §§ 19-1-1 et seq.

JUDICIAL DECISIONS

1. In general.

Proper way to test validity of formation of county under legislative act providing therefor is by quo warranto. State ex rel. Collins v. Jackson, 119 Miss. 727, 81 So. 1, 1919 Miss. LEXIS 13 (Miss. 1919).

RESEARCH REFERENCES

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 2, 8.

CJS.

20 C.J.S., Counties §§ 8-17, 21-33.

§ 3-3-5. How far counties on Mississippi River and Gulf of Mexico extend.

The counties lying immediately on the Mississippi River shall, respectively, have and possess jurisdiction and extend to the western boundary of the state, within the space embraced, by extending their boundary lines which strike the river, on a continuous direct course to the extreme boundary of the state, including all islands that may be within the limits just defined; and the counties bordering on the Gulf of Mexico, to wit: Jackson, Harrison and Hancock, shall, respectively, have and possess jurisdiction and extend to the southern boundary of the state within the space embraced by extending their boundary lines which strike the Gulf of Mexico, or the inlets thereto, on a continuous direct course to the southern boundary of the state, including all islands that may lie within the limits thus defined.

HISTORY: Codes, 1857, ch. 2, art. 2; 1880, § 23; 1892, § 347; 1906, § 405; Hemingway's 1917, § 3819; 1930, § 3887; 1942, § 3022.

Cross References — County boundaries generally, see §§ 19-1-1 et seq.
Concurrent criminal jurisdiction, see §§ 99-11-5 et seq.

JUDICIAL DECISIONS

1. In general.

Lands under nonnavigable waters subject to ebb and flow of tide are within public trust given to states upon their entry into Union; therefore, state had power to issue oil and gas leases for those lands despite claims of private claimants who traced their record title to lands to prestatehood spanish land grants. Phillips Petroleum Co. v. Mississippi, 484 U.S. 469, 108 S. Ct. 791, 98 L. Ed. 2d 877, 1988 U.S. LEXIS 939 (U.S. 1988).

RESEARCH REFERENCES

CJS.

81A C.J.S., States §§ 36–51, 59–66, 69.

§ 3-3-7. Legal holidays.

(1) Except as otherwise provided in subsection (2) of this section, the following are declared to be legal holidays, viz: the first day of January (New Year's Day); the third Monday of January (Robert E. Lee's birthday and Dr. Martin Luther King, Jr.'s birthday); the third Monday of February (Washington's birthday); the last Monday of April (Confederate Memorial Day); the last Monday of May (National Memorial Day and Jefferson Davis' birthday); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the eleventh day of November (Armistice or Veterans' Day); the day fixed by proclamation by the Governor of Mississippi as a day of Thanksgiving, which shall be fixed to correspond to the date proclaimed by the President of the United States (Thanksgiving Day); and the twenty-fifth day of December (Christmas Day). In the event any holiday hereinbefore declared legal shall fall on Sunday, then the next following day shall be a legal holiday.

(2) In lieu of any one (1) legal holiday provided for in subsection (1) of this section, with the exception of the third Monday in January (Robert E. Lee's and Martin Luther King, Jr.'s birthday) and the eleventh day of November (Armistice or Veterans Day), the governing authorities of any municipality or county may declare, by order spread upon its minutes, Mardi Gras Day or any one (1) other day during the year, to be a legal holiday.

(3) August 16 is declared to be Elvis Aaron Presley Day in recognition and appreciation of Elvis Aaron Presley's many contributions, international recognition and the rich legacy left to us by Elvis Aaron Presley. This day shall be a day of recognition and observation and shall not be recognized as a legal holiday.

(4) May 8 is declared to be Hernando de Soto Day in recognition, observation and commemoration of Hernando de Soto, who led the first and most imposing expedition ever made by Europeans into the wilds of North America and the State of Mississippi, and in further recognition of the Spanish explorer's 187-day journey from the Tombigbee River basin on our state's eastern boundary, westward to the place of discovery of the Mississippi River on May 8, 1541. This day shall be a day of commemoration, recognition and observation of Hernando de Soto and European exploration and shall not be recognized as a legal holiday.

(5) Armistice Day (Veterans Day) shall be observed by appropriate exercises in all the public schools in the State of Mississippi. The superintendent of schools of each public school district is authorized to provide for the appearance of uniformed military personnel, uniformed veterans or the families of fallen military personnel/veterans at such public school exercises in honor of Armistice (Veterans) Day. The superintendent of schools is also authorized to permit the school band and its director(s) at any public school in the district to perform at Armistice (Veterans) Day exercises in the school district upon the request of public officials or veterans associations without loss of any program credit by participating students and without loss of leave by participating school personnel.

HISTORY: Codes, 1880, § 1132; 1892, § 3514; 1906, § 4011; Hemingway's 1917, § 2045; 1930, § 5024; 1942, § 5946; Laws, 1924, ch. 343; Laws, 1940, ch. 138; Laws, 1948, ch. 365; Laws, 1966, ch. 563, § 1; Laws, 1970, ch. 460, § 1; Laws, 1987, ch. 301; Laws, 1987, ch. 398; Laws, 1988, ch. 566; Laws, 1993, ch. 301, § 1; Laws, 1997, ch. 339, § 1; Laws, 2011, ch. 491, § 1, eff from and after July 1, 2011.

Cross References — Designation of the first week in May as Hernando de Soto Week, see § 3-3-8.

Legal holidays being excepted from days state offices are to be open and staffed, see § 25-1-98.

Office hours of court house officers, see § 25-1-99.

Regulation of banking hours, see § 81-5-97.

JUDICIAL DECISIONS

1. In general.

Minutes of a board of supervisors meeting are legally signed on the day following that fixed by law, where such day is a holiday. Gordon v. Monroe County, 244 Miss. 849, 147 So. 2d 126, 1962 Miss. LEXIS 515 (Miss. 1962).

City ordinance adopted on a legal holiday is not void. Griffith v. Mayor & Board of Aldermen, 102 Miss. 1, 58 So. 781, 1912 Miss. LEXIS 33 (Miss. 1912).

OPINIONS OF THE ATTORNEY GENERAL

Municipalities are not required to observe all state holidays set forth in statute. Ellis, May 28, 1991, A.G. Op. #91-0330.

Only holidays recognized by state and its political subdivisions are enumerated in Miss. Code Section 3-3-7; there is no authority currently available to utility district that empowers district's governing board to amend what legislature has provided as holidays. Backstrom, Feb. 5, 1993, A.G. Op. #93-0033.

It is the intent of this section that there be ten legal holidays per year, and a municipality does not have the authority to create eleven legal holidays in exercising its power under subsection (2). Bowman, July 18, 2003, A.G. Op. 03-0348.

A city may not designate individual employee birthdays as legal holidays. Alternatively, the municipality could adopt a "birthday leave" policy which may or may not accumulate, depending on the provisions of the policy adopted. Broewn, Nov. 11, 2004, A.G. Op. 04-0568.

Municipal governing authorities may not enlarge upon the number of legal holidays set forth in Section 3-3-7. Brooks, Feb. 3, 2006, A.G. Op. 06-0029.

RESEARCH REFERENCES

ALR.
Validity of court's judgment rendered on Sunday or holiday. 85 A.L.R.2d 595.

Am. Jur.
73 Am. Jur. 2d, Sundays and Holidays §§ 3 et seq.

CJS.
83 C.J.S., Sunday §§ 1 et seq.

Lawyers' Edition.
Establishment and free exercise of religion clauses of Federal Constitution's First Amendment as applied to governmental regulations or activities allegedly supporting public observance of Sabbath or of religious holiday. 106 L. Ed. 2d 752.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Time, Evidence, Subpoenas, and Masters, Referees, and Commissioners – Rules 6, 43, 45 and 53. 52 Miss. L. J. 145, March 1982.

§ 3-3-8. Designation of first week in May as Hernando de Soto Week.

The first week in May of each year is declared to be Hernando de Soto Week in Mississippi in recognition, observation and commemoration of Hernando de Soto who led the first and most imposing expedition ever made by Europeans into the wilds of North America and the State of Mississippi, and in further recognition of the Spanish explorer's 187-day journey from the Tombigbee River basin on our state's eastern boundary, westward to the place of discovery of the Mississippi River on May 8, 1541.

This week shall be a week of recognition, observation and commemoration of Hernando de Soto and European exploration and no day of this week shall be recognized as a legal holiday.

HISTORY: Laws, 1988, ch. 567, eff from and after passage (approved May 21, 1988).

Cross References — Designation of May 8 as Hernando de Soto day, see § 3-3-7.

§ 3-3-9. State tree.

The magnolia or evergreen magnolia (Magnolia grandiflora L.) is herewith designated as the state tree of Mississippi.

HISTORY: Codes, 1942, § 6192; Laws, 1938, ch. 366.

§ 3-3-11. State bird.

The bird commonly called the mocking bird is hereby designated the state bird of the State of Mississippi.

HISTORY: Codes, 1942, § 6192-01; Laws, 1944, ch. 326, § 1.

§ 3-3-13. State flower.

The flower or bloom of the magnolia or evergreen magnolia (Magnolia grandiflora L.) is hereby designated as the state flower of Mississippi.

HISTORY: Codes, 1942, § 6192-02; Laws, 1952, ch. 340.

Cross References — Designation of state tree, see § 3-3-9.

§ 3-3-14. State wildflower.

The Coreopsis sp. is hereby designated as the state wildflower of Mississippi.

HISTORY: Laws, 1991, ch. 339, § 1, eff from and after July 1, 1991.

§ 3-3-15. Display of state flag.

The state flag may be displayed from all public buildings from sunrise to sunset; however, the state flag may be displayed from all public buildings twenty-four (24) hours a day if properly illuminated. The state flag should not be displayed when the weather is inclement, except when an all-weather flag is displayed. The state flag shall receive all of the respect and ceremonious etiquette given the American flag. Provided, however, nothing in this section shall be construed so as to affect the precedence given to the flag of the United States of America.

HISTORY: Codes, 1942, § 6216-08.5; Laws, 1962, ch. 492, §§ 1-3; Laws, 1984, ch. 357, eff from and after passage (approved April 16, 1984).

Cross References — Design of state flag, see § 3-3-16.
Display of and curriculum of study concerning state flag in public schools, see § 37-13-5.
Pledge of allegiance to state flag in public schools, see § 37-13-7.
Non-registrability of trademark or label consisting of state flag, see § 75-25-3.
Desecration of state flag prohibited, see § 97-7-39.

JUDICIAL DECISIONS

1. In general.
The statute cannot be interpreted as prohibiting display of the Confederate Battle flag or any other flag. Daniels v. Harrison County Bd. of Supervisors, 722 So. 2d 136, 1998 Miss. LEXIS 440 (Miss. 1998).

RESEARCH REFERENCES

ALR.
What constitutes violation of flag desecration statutes. 41 A.L.R.3d 502.

Am. Jur.
35 Am. Jur. 2d, Flag §§ 1-4.

CJS.
36A C.J.S., Flags §§ 3, 4.

Law Reviews.
Forman, Driving Dixie down: removing the confederate flag from Southern state capitols. 101 Yale Law Journal 505 (Nov. 1991).

§ 3-3-15.1. Display of POW/MIA flag.

(1) The Legislature enacts this section as the symbol of the nation's and the state's commitment to achieving the fullest possible accounting for Mississippians who have been or in the future may become prisoners of war, missing in action or otherwise unaccounted for as a result of hostile action.

(2) As used in this section, the term "POW/MIA Flag" means the National League of Families POW/MIA Flag recognized officially and designated by Section 2 of Public Law 101-355 (36 USCS Section 189).

(3) The Bureau of Capitol Facilities shall display the POW/MIA Flag in a prominent place at the New Capitol Building on the following days:

(a) Armed Forces Day, the third Saturday in May;
(b) Memorial Day, the last Monday in May;
(c) Flag Day, June 14;
(d) Independence Day, July 4;
(e) National POW/MIA Recognition Day; and
(f) Veterans Day, November 11.

(4) Such display shall serve as the symbol of the nation's and the state's concern and commitment to achieving the fullest possible accounting of Americans and Mississippians who, having been prisoners of war or missing in action, still remain unaccounted for.

(5) This section shall not be construed or applied so as to either require or prohibit the display of the POW/MIA Flag by any county, municipality or public school district in Mississippi.

HISTORY: Laws, 2006, ch. 519, § 1, eff from and after passage (approved Apr. 3, 2006).

Editor's Notes — 36 USCS Section 189, referred to in subsection (2), was revised effective August 12, 1998, and the referenced content is now found in 36 USCS 902(a).

§ 3-3-16. Design of state flag.

The official flag of the State of Mississippi shall have the following design: with width two-thirds (⅔) of its length; with the union (canton) to be square, in width two-thirds (⅔) of the width of the flag; the ground of the union to be red and a broad blue saltire thereon, bordered with white and emblazoned with thirteen (13) mullets or five-pointed stars, corresponding with the number of the original States of the Union; the field to be divided into three (3) bars of equal width, the upper one blue, the center one white, and the lower one, extending the whole length of the flag, red (the national colors); this being the flag adopted by the Mississippi Legislature in the 1894 Special Session.

HISTORY: Laws, 2001, ch. 301, § 2, eff from and after February 7, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Editor's Notes — The United States Attorney General, by letter dated February 7, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 2001, ch. 301, § 2.

Laws, 2001, ch. 301, § 1, provides:

"SECTION 1. (1) There shall be a statewide special election for the purpose of selecting the official flag of the State of Mississippi, to be held on Tuesday, April 17, 2001, and conducted in the same manner as regular general elections are held, except as otherwise provided in subsection (2) of this section and in Section 6 of this act [Laws, 2001, ch. 301]. The question put before the voters at such statewide special election shall read on the ballots as follows:

"PLEASE VOTE FOR PROPOSITION 'A' OR PROPOSITION 'B':

THE OFFICIAL FLAG OF THE STATE OF MISSISSIPPI SHALL HAVE THE FOLLOWING DESIGN:

PROPOSITION 'A'

(Herein shall be inserted the color picture or drawing, which the Secretary of State has provided to county election commissioners, of the flag design which was adopted by the Mississippi Legislature in the 1894 Special Session, under which shall appear the words '1894 state flag design.')

1894 STATE FLAG DESIGN

FOR PROPOSITION 'A': _______

PROPOSITION 'B'

(Herein shall be inserted the color picture or drawing, which the Secretary of State has provided to county election commissioners, of the proposed new flag design, as described in subsection (1) of the second tier of Section 2 of this act [Laws, 2001, ch. 301], under which shall appear the words 'proposed new state flag design.')

PROPOSED NEW STATE FLAG DESIGN

FOR PROPOSITION 'B': _______ "

The qualified electors may indicate their preference on the line following the proposition that they prefer.

The preference of a majority of the qualified electors voting in the election shall determine the design of the official flag of the State of Mississippi. In addition to the enactment of the official state flag as provided in Section 2 of this act [Laws, 2001, ch. 301], the Legislature shall take whatever other steps are necessary to effectuate the mandate of the electorate's selection of the official state flag and all other provisions of Section 2 of this act [Laws, 2001, ch. 301].

(2) The statewide special election for the purpose of selecting the official state flag shall be administered by means of ballots containing a uniform representation of the choice of designs proposed for the official state flag, which shall be provided by the Secretary of State to the election commissioners of each county. The Secretary of State shall determine whether, in each county, it would be more efficient to administer the election by paper ballots, voting machines, electronic voting systems, optical mark reading equipment or other mechanized equipment. The method used in each county shall be as uniform as practicable when compared to any other county in which the same method is used. In any event, the Secretary of State shall include a color picture or drawing of each of the proposed official flag designs on all ballots provided for in this section. The Secretary of State is authorized to enter into any necessary contracts for providing the required color picture or drawing of each of the proposed official flag designs on all ballots in all counties of this state. The costs incurred in providing the ballots which are required to include a color picture or drawing of each of the proposed official flag designs shall be borne by the State of Mississippi, and the Legislature shall

appropriate the funds necessary for this purpose. All other costs associated with the holding of the statewide special election for the purpose of selecting the official state flag shall be borne by each individual county.

(3) Every individual who makes contributions to or expenditures in support of or in opposition to a proposition presented to the electorate in the statewide special election for the selection of the official state flag, in amounts aggregating in excess of Two Hundred Dollars ($200.00), shall file all reports required to be filed by political committees under Sections 23-15-801 through 23-15-817, in the same manner and at the same time as provided for political committees.

(4) The county election commissioners shall transmit to the Secretary of State, in the same manner as the vote for state officers is transmitted, a statement of the total number of votes cast for each proposition in the statewide special election. The Secretary of State shall tabulate such returns and certify the results to the Governor and to each house of the Legislature."

Cross References — Display of state flag, see § 3-3-15.

Display of and curriculum of study concerning state flag in public schools, see § 37-13-5.

Pledge of allegiance to state flag in public schools, see § 37-13-7.

Non-registrability of trademark or label consisting of state flag, see § 75-25-3.

Desecration of state flag prohibited, see § 97-7-39.

RESEARCH REFERENCES

Law Reviews.

Forman, Driving Dixie down: removing the confederate flag from Southern state capitols. 101 Yale Law Journal 505 (Nov. 1991).

§ 3-3-17. State land mammals.

The white-tailed deer (Odocoileus virginianus) and the red fox (Vulpes vulpes) are designated the state land mammals of Mississippi.

HISTORY: Laws, 1974, ch. 551, § 1; Laws, 1997, ch. 411, § 1, eff from and after July 1, 1997.

§ 3-3-19. State water mammal.

The bottlenosed dolphin (Tursiops truncatus), commonly called the porpoise, is hereby designated the state water mammal of Mississippi.

HISTORY: Laws, 1974, ch. 551, § 2, eff from and after passage (approved April 12, 1974).

§ 3-3-20. State reptile.

The American Alligator (Alligator Mississippiensis) is hereby designated the State Reptile of Mississippi.

HISTORY: Laws, 2005, ch. 302, § 1, eff from and after July 1, 2005.

Editor's Notes — The preamble to Laws of 2005, ch. 302, reads as follows:

"WHEREAS, the American Alligator is found in the southeastern United States from Texas to Florida, and from South Carolina to the Gulf Coast. They are found in both natural and manmade freshwater lakes, ponds, rivers and wetland areas; and

"WHEREAS, the Mississippi Department of Wildlife, Fisheries and Parks estimates that there are 32,000-38,000 alligators and about 408,000 acres of alligator habitat in Mississippi. Alligator reports have come from as far north as Coahoma, Lafayette and Itawamba Counties, and as far south as the coastal counties of Jackson, Harrison and Hancock; and

"WHEREAS, alligators are important to the ecology of their habitat. During droughts, they dig holes, or dens, which provide water for the wildlife community. The alligators construct these 'gator holes' with their large sweeping tails that retain water during periods of drought. This provides water and foraging space for many other species, such as wading birds; and

"WHEREAS, alligators are unique in that, unlike other reptiles, female alligators will protect their young for up to two years after hatching. We feel this sets a good example for all animal parents. They have proven themselves to be highly resilient to both natural and induced mortality. In fact, they are known to have existed before the dinosaurs – more than 200 million years ago; and

"WHEREAS, alligators are one of the few animals that have been listed as endangered and rallied back again."

§ 3-3-21. State fish.

The largemouth bass (Micropterus salmoides) is hereby designated the state fish of Mississippi.

HISTORY: Laws, 1974, ch. 551, § 3, eff from and after passage (approved April 12, 1974).

§ 3-3-23. State shell.

The oyster shell is hereby designated the state shell of Mississippi.

HISTORY: Laws, 1974, ch. 551, § 4, eff from and after passage (approved April 12, 1974).

§ 3-3-25. State waterfowl.

The wood duck (Aix sponsa) is hereby designated the state waterfowl of Mississippi.

HISTORY: Laws, 1974, ch. 551, § 5, eff from and after passage (approved April 12, 1974).

§ 3-3-27. State insect.

The honeybee (Apis mellifera) is hereby designated the State Insect of Mississippi.

HISTORY: Laws, 1980, ch. 317, eff from and after July 1, 1980.

§ 3-3-29. State beverage.

Milk is hereby designated the state beverage of Mississippi.

HISTORY: Laws, 1984, ch. 394, eff from and after July 1, 1984.

§ 3-3-31. State language.

The English language is the official language of the State of Mississippi.

HISTORY: Laws, 1987, ch. 439, eff from and after July 1, 1987.

RESEARCH REFERENCES

ALR.

Right of accused to have evidence or court proceedings interpreted. 36 A.L.R.3d 276.

Requirement that employees speak English in workplace as discrimination in employment under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.). 90 A.L.R. Fed. 806.

§ 3-3-33. State butterfly.

The spicebush swallowtail (Pterourus troilus) is hereby designated the state butterfly of Mississippi.

HISTORY: Laws, 1991, ch. 315, § 1, eff from and after July 1, 1991.

§ 3-3-35. "Retired Teachers Day" designated.

The Sunday preceding Thanksgiving Day of each year is declared to be "Retired Teachers Day" in recognition and commemoration of the work of all retired educators who have devoted their careers to the mental and physical development of the youth of this state.

HISTORY: Laws, 1991, ch. 346 § 1, eff from and after passage (approved March 15, 1991).

§ 3-3-37. State Grand Opera House.

The Grand Opera House of Meridian is designated the official State Grand Opera House of Mississippi.

HISTORY: Laws, 1993, ch. 313, § 1, eff from and after passage (approved March 11, 1993).

§ 3-3-39. State dance.

The dance known as the square dance is hereby designated and adopted as the American folk dance of the State of Mississippi.

HISTORY: Laws, 1995, ch. 303, § 1, eff from and after July 1, 1995.

§ 3-3-41. Mississippi Coat of Arms.

(1) The Mississippi Coat-of-Arms shall have the following design: a shield, blue in color, with an eagle upon it with extended pinions, holding in the right talon a palm branch and bundle of arrows in the left, with the word

"Mississippi" above the eagle; the lettering on the shield and the eagle to be in gold; below the shield two (2) branches of the cotton stalk, saltier wise, and a scroll below extending upward and on each side three-fourths (¾) of the length of the shield; upon the scroll, which is to be red, the motto to be printed in gold letters upon white spaces, the motto to be "Virtute et Armis"; this being the same Coat-of-Arms adopted by the Legislature in Chapter 37, Laws of the Extraordinary Session of 1894.

(2) The Governor of the State is authorized and empowered to procure a steel plate and one (1) metal electrotype plate for printing and engraving the Coat-of-Arms, which plates shall be preserved in the Office of the Secretary of State.

HISTORY: Laws, 2001, ch. 303, § 1, eff from and after passage (approved Feb. 7, 2001).

§ 3-3-42. The Great Seal of the State of Mississippi.

It shall be the duty of the Secretary of State to procure the official seal of this state as described in this section.

The center of the seal shall have an eagle displayed proper, holding an olive branch in his dexter talon and a bundle of three (3) arrows in his sinister talon. The shield on the breast of the eagle shall have eleven (11) vertical stripes of alternating white and red, supporting a chief of blue with eleven (11) white five-pointed stars in two (2) rows with five (5) stars in each row and one (1) star centered over the third column.

The margins dexter and sinister of the center point of the shield shall each have one (1) white five-pointed star. The margin over the eagle shall have the inscription "THE GREAT SEAL OF THE STATE OF MISSISSIPPI." The margin under the eagle shall have the inscription "IN GOD WE TRUST."

The official seal need not be printed or otherwise displayed in color.

HISTORY: Laws, 2014, ch. 474, § 2, eff from and after July 1, 2014.

Editor's Notes — Laws of 2014, ch. 474, § 4 provides:

"SECTION 4. The 1818 Mississippi Laws, Act of January 19, 1818, Page 142, which provided for the description of the seal of the state, is hereby repealed."

§ 3-3-42.1. Replacement of older version of state seal.

All state agencies shall continue to use stationery and other supplies having the great seal thereon as it existed before July 1, 2014, until such stationery and other supplies are depleted. The great seal as it existed before July 1, 2014, affixed on any public buildings, property or any other item shall remain thereon until the replacement of the seal due to normal wear or until replacement with any nonpublic funds.

HISTORY: Laws, 2014, ch. 474, § 3, eff from and after July 1, 2014.

Editor's Notes — Laws of 2014, ch. 474, § 4 provides:

"SECTION 4. The 1818 Mississippi Laws, Act of January 19, 1818, Page 142, which provided for the description of the seal of the state, is hereby repealed."

§ 3-3-43. State toy.

The Teddy Bear is designated the state toy of Mississippi, in recognition of the Mississippi connection to the origin of the Teddy Bear. The connection is that on November 14, 1902, during a hunting expedition led by distinguished Mississippian Holt Collier in Smedes, Mississippi, President Theodore Roosevelt refused to shoot a small, exhausted black bear. The shot not fired at a baby bear in the Mississippi Delta became a great credit to the heroic and sportsmanlike conduct of President Roosevelt, and because of the President's journey to Mississippi, the stuffed bear toy was appropriately named the "Teddy Bear," a positive symbol of love, comfort and joy for children of all ages.

HISTORY: Laws, 2002, ch. 466, § 1; Laws, 2003, ch. 361, § 1, eff from and after passage (approved Mar. 13, 2003).

Editor's Notes — The preamble to Chapter 444, Laws of 2002, provides as follows:

"WHEREAS, the Teddy Bear has remained one of America's all-time favorite toys for nearly a century; and

"WHEREAS, the origin of the Teddy Bear dates back to a hunting trip in Smedes, Mississippi, on November 14, 1902; and

"WHEREAS, during that particular hunting expedition, President Theodore Roosevelt refused to shoot a small, exhausted black bear; and

"WHEREAS, the shot not fired at the cuddly creature in the Mississippi Delta was soon heard around the land as a great credit to the heroic and sportsmanlike conduct of President Roosevelt; and

"WHEREAS, because of this journey by the President to Mississippi, the stuffed bear toy, appropriately named the "Teddy Bear," evolved and continues to be a universal symbol of love, comfort and joy for children of all ages; NOW, THEREFORE,"

§ 3-3-45. State soil.

Natchez silt loam (coarse-silty, mixed, superactive, thermic, Typic Eutrudepts) is hereby designated as the official state soil of Mississippi.

HISTORY: Laws, 2003, ch. 360, § 1, eff from and after passage (approved Mar. 13, 2003).

Editor's Notes — The preamble to Chapter 360, Laws of 2003, provides as follows:

"WHEREAS, it appears that each of a growing number of states of the United States, having significant concern for soil, have by legislative enactment chosen a particular soil as their official state soil; and

"WHEREAS, the State of Mississippi has significant concern for its soil resources; and

"WHEREAS, soils enhance the quality of surface and ground waters and serve as the foundation for our bountiful agriculture, our unique wildlife habitats, our beautiful landscapes and the homes and communities of our citizens; and

"WHEREAS, soils are essential to the quality of life and welfare of all Mississippians; and

"WHEREAS, Natchez silt loam (a coarse-silty, mixed, superactive, thermic, Typic Eutrudepts) covers a significant land area in Mississippi and is a highly productive agricultural soil; and

"WHEREAS, the State of Mississippi has yet to designate a state soil; NOW, THEREFORE,"

§ 3-3-47. State Automobile Museum.

The Tupelo Auto Museum, Inc., is designated as the state automobile museum.

HISTORY: Laws, 2003, ch. 362, § 1, eff from and after July 1, 2003.

§ 3-3-48. State wildlife heritage museum.

The Mississippi Wildlife Heritage Museum in Leland, Mississippi, is designated as the official state wildlife heritage museum.

HISTORY: Laws, 2016, ch. 303, § 1, eff from and after passage (approved Mar. 28, 2016).

§ 3-3-49. State Historical Industrial Museum.

The Mississippi Industrial Heritage Museum, Incorporated, is designated as the state historical industrial museum.

HISTORY: Laws, 2004, ch. 451, § 1, eff from and after July 1, 2004.

§ 3-3-51. "Nurses Month" designated.

The month of May of each year is designated as "Nurses Month" to promote and honor the hard work and dedication of nurses in the State of Mississippi.

HISTORY: Laws, 2006, ch. 301, § 1, eff from and after passage (approved Feb. 7, 2006).

Editor's Notes — The preamble to Laws of 2006, ch. 301, provides:

"WHEREAS, the month of May is designated "Nurses Month" in Mississippi in recognition of the hard work and dedication of nurses and their enormous contributions to improving the health care of Mississippi's citizens; and

"WHEREAS, it is the intent of the Mississippi Legislature in designating the month of May recognizing nurses, to acknowledge and celebrate the nurses of this state who work in hospitals, nursing homes, doctor's offices, schools, health care centers and even private homes; and

"WHEREAS, the contributions of the nursing profession to the improvements that have been made in health care are sometimes overlooked; and

"WHEREAS, the members of the Mississippi Legislature feel that is vitally important that a month be formally designated as "Nurses Month" for the purpose of increasing public awareness of the role nurses play in the health and well being of Mississippians and the health care system: NOW, THEREFORE,"

§ 3-3-53. "Mississippi Health Awareness Day" designated.

The third Thursday of January of each year is designated as Mississippi

Health Awareness Day to promote health and disease prevention efforts throughout the State of Mississippi.

HISTORY: Laws, 2006, ch. 304, § 1, eff from and after passage (approved Feb. 14, 2006).

Editor's Notes — The preamble to Laws of 2006, ch. 304, provides:

"WHEREAS, the Community Organization for Health Awareness, Incorporated (COHA, Inc.), was established in 1994 to assist Mississippi communities with addressing the astounding statistics related to heart attack, stroke, cancer, teen pregnancy, teen alcohol and drug abuse, as well as other health-related matters; and

"WHEREAS, medical practitioners, social service and other personnel along with community residents volunteer their talent and resources in a collaborative effort to engage, educate and inform underserved communities with regard to the prevention of diseases that plague this population; and

"WHEREAS, since its inception, COHA, Inc., has had a tremendous impact on the lives of many residents through annual health fairs and numerous other community based initiatives, all at no cost to recipients; and

"WHEREAS, a continued improvement in the overall quality of life for many Mississippi citizens has been realized through the contributions of COHA, Inc., to humankind; and

"WHEREAS, it is most appropriate to designate one (1) day of each year to focus on improving the health of all Mississippians through disease prevention efforts: NOW, THEREFORE,"

§ 3-3-55. "Katrina Day of Remembrance" designated.

August 29 of each year is designated as "Katrina Day of Remembrance" in Mississippi in honor of the victims of this most destructive storm, to bring awareness of the destruction caused by hurricanes, and to call upon the citizens of Mississippi to join each other and the entire community that is linked by the Gulf of Mexico in a unified expression of faith and hope.

HISTORY: Laws, 2007, ch. 301, § 1, eff from and after July 1, 2007.

Editor's Notes — The preamble to Laws of 2007, ch. 301 provides as follows:

"WHEREAS, on Monday, August 29, 2005, Hurricane Katrina, originally designated a Category Four Hurricane, crashed with unrelenting and violent force onto the entire Mississippi Gulf Coast, making landfall at or around Waveland, Mississippi. In one day, the worst natural disaster in our state's history struck us a grievous blow, leaving a 90-mile swath of destruction along the Mississippi Gulf Coast and causing severe damage throughout Central and North Mississippi; and

"WHEREAS, the Legislature of the State of Mississippi hereby recognizes that the events of August 29, 2005, and the days following, when Hurricane Katrina struck Mississippi a deadly blow and so many in Mississippi lost their lives, are among the most historic in the entire history of Mississippi; and

"WHEREAS, the Legislature further recognizes that it is appropriate for the State of Mississippi to commemorate this tragic event and to memorialize the hundreds of citizens who lost their lives; NOW, THEREFORE,"

§ 3-3-57. State military history museum.

The Mississippi Military Department's Armed Forces Museum is hereby designated as Mississippi's official state military history museum.

The museum will henceforth be named "Mississippi Armed Forces Museum."

HISTORY: Laws, 2010, ch. 472, § 9, eff from and after July 1, 2010.

§ 3-3-59. "Mississippi Musicians Day" designated.

The third Tuesday of every March shall be declared and celebrated as "Mississippi Musicians Day."

HISTORY: Laws, 2015, ch. 468, § 2, eff from and after July 1, 2015.

§ 3-3-61. "Vietnam Veterans Day" designated.

In recognition of the service, courage and sacrifice of those valiant men and women of the United States Armed Forces who served during the Vietnam Conflict, March 29th of each year is designated as Vietnam Veterans Day in Mississippi.

HISTORY: Laws, 2017, ch. 302, § 1, eff from and after passage (approved Mar. 1, 2017).

CHAPTER 5.

ACQUISITION OF LAND BY UNITED STATES GOVERNMENT

Sec.

3-5-1. Consent given for acquisition of land by the United States for certain purposes.
3-5-3. Governor may cede jurisdiction to the United States for certain purposes.
3-5-5. Jurisdiction; relinquishment of jurisdiction to state as to land under control of federal Administrator of Veterans Affairs.
3-5-7. Tax exemption.
3-5-9. Restrictions on cession.
3-5-11. State forfeited tax lands may be sold to the United States for certain purposes.
3-5-13. National forest lands; acreage limitations; exemptions.
3-5-15. National forest lands; concurrent jurisdiction; grant of power to Congress.
3-5-17. Municipality may lease to United States.

§ 3-5-1. Consent given for acquisition of land by the United States for certain purposes.

The consent of the State of Mississippi is given, in accordance with the 17th Clause, 8th Section, and of the 1st article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state which has heretofore been or may hereafter be acquired for custom houses, post offices, or other public buildings.

HISTORY: Codes, 1930, § 6055; 1942, § 4153; 1928, chs. 4, 85; brought forward without change, Laws, 2018, ch. 347, § 2, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment brought the section forward without change.

Cross References — Mississippi Transportation Commission conveying lands for the use of parks, see § 55-5-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

A school district could make a direct sale of a property to the General Services Administration for use as a United States District Courthouse pursuant to Section 3-5-1, and was not required to follow the procedures and provisions of Sections 37-7-451 et seq. and 37-7-471 et seq., so long as fair market value was obtained for the property. Dukes, March 31, 2000, A.G. Op. #2000-0171.

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if jurisdiction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

RESEARCH REFERENCES

Am. Jur.
62 Am. Jur. 2d, Post Office §§ 37-38.

CJS.
91 C.J.S., United States §§ 123-126, 128.

§ 3-5-3. Governor may cede jurisdiction to the United States for certain purposes.

The governor, upon application made to him in writing, on behalf of the United States, for the purpose of acquiring and holding lands or using any part of a public road of any county within the limits of this state, for the purpose of making, building, or constructing levees, canals, or any other works in connection with the improvement of rivers and harbors, or as a site for a fort, magazine, arsenal, dockyard, courthouse, custom house, lighthouse, post office, or other needful buildings, or for the purpose of locating and maintaining national military parks, or for any other public works or purposes accompanied by proper evidence of the purchase of such lands, or the consent of the board of supervisors of the proper county for such public roads to be used for said purpose, is authorized for the state to cede jurisdiction thereof to the United States for the purpose of the cession and none other.

HISTORY: Codes, 1892, § 2178; 1906 § 2395; Hemingway's 1917, § 4788; 1930, § 6059; 1942, § 4157; Laws, 1900, ch. 67.

Cross References — Jurisdiction of United States in acquisition of lands, see § 55-5-17.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Enforcement of state laws.

1. In general.
Although the state had given its consent for the United States to purchase certain of its lands for the use and benefit of Choctaw Indians, it did not give its consent for the United States to acquire civil and criminal jurisdiction over the land or the Indians and it thereby retained jurisdiction for its own courts. Tubby v. State, 327 So. 2d 272, 1976 Miss. LEXIS 1780 (Miss. 1976).

2. Enforcement of state laws.
Defendant's conviction for possession of cocaine, more then 10 grams, but less than 30 grams was appropriate because the State did not lack jurisdiction to prosecute the charge against him even though he was arrested on property owned by the United States. It was not unusual for the United States to own within a state lands which were set apart and used for public purposes, and such ownership and use, without more, did not withdraw the lands from the jurisdiction of the state; Mississippi was free to enforce its criminal and civil laws on federal land as long as the laws did not conflict with federal law. Williams v. State, 5 So. 3d 496, 2008 Miss. App. LEXIS 639 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 135 (Miss. 2009).

OPINIONS OF THE ATTORNEY GENERAL

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if jurisdiction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 1, 23, 24, 26, 29, 50.

§ 3-5-5. Jurisdiction; relinquishment of jurisdiction to state as to land under control of federal Administrator of Veterans Affairs.

(1) The exclusive jurisdiction in and over any land which has heretofore been, or may hereafter be, so acquired by the United States is hereby ceded to the United States for all purposes, except that the state retains the right to serve thereon all civil and criminal processes as provided in Section 3-5-9. The jurisdiction ceded hereby shall not vest until the United States shall have acquired title to the lands by purchase, condemnation, or otherwise, and shall continue no longer than the United States shall own such lands for the purposes for which acquired.

(2) Full or partial jurisdiction may be relinquished to the state as to land or interests therein under the supervision and control of the Administrator of Veterans Affairs of the United States or the Secretary of the United States Army as follows:

(a) Notice in writing by the Administrator of Veterans Affairs or the Secretary of the United States Army shall be given to the Governor stating the intent to relinquish jurisdiction and stating specifically the extent of such relinquishment.

(b) The Governor may reject such relinquishment of jurisdiction by Executive Order filed with the Secretary of State prior to the effective date of such relinquishment. Upon request of any party or court, the Secretary of State shall certify by letter which shall be sufficient proof the existence or nonexistence of such executive order.

(c) Such relinquishment shall be effective as of 12 midnight of the last day of the month next succeeding the month in which such notice is received by the Governor.

HISTORY: Codes, 1930, § 6057; 1942, §§ 4154, 4155; Laws, 1928, chs. 4, 85; Laws, 1977, ch. 331; Laws, 1994, ch. 638, § 1, eff from and after passage (approved April 8, 1994).

Cross References — Restrictions on cession of land, see § 3-5-9.
Property exempt from taxation, see § 27-31-1.

Payments in lieu of ad valorem taxes, see §§ 27-37-1 et seq.
Jurisdiction of United States in acquisition of lands, see § 55-5-17.
Jurisdiction of crimes, see §§ 99-11-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if jurisdiction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

§ 3-5-7. Tax exemption.

So long as the lands acquired by the United States pursuant to Sections 3-5-1 and 3-5-3 shall remain the property of the United States, and no longer, the same shall be exempt from all state, county and municipal taxation, assessment, or other charges which may be levied or imposed under authority of the state.

HISTORY: Codes, 1930, § 6057; 1942, § 4155; Laws, 1928, chs. 4, 85.

Cross References — Property exempt from taxation, see § 27-31-1.
Federal payments in lieu of taxes, see §§ 27-37-1 et seq.

§ 3-5-9. Restrictions on cession.

The concession of jurisdiction to the United States over any part of the territory of the state, heretofore or hereafter made, shall not prevent the execution on such land of any process, civil or criminal, under the authority of this state, nor prevent the laws of this state from operating over such land; saving to the United States security to its property within the limits of the jurisdiction ceded.

HISTORY: Codes, 1892, § 2179; 1906, § 2396; Hemingway's 1917, § 4789; 1930, § 6060; 1942, § 4158.

Cross References — Jurisdiction of land ceded to United States, see § 3-5-5.
Jurisdiction of crimes, see §§ 99-11-1 et seq.

JUDICIAL DECISIONS

1. Enforcement of state laws.

Defendant's conviction for possession of cocaine, more then 10 grams, but less than 30 grams was appropriate because the State did not lack jurisdiction to prosecute the charge against him even though he was arrested on property owned by the United States. It was not unusual for the United States to own within a state lands which were set apart and used for public purposes, and such ownership and use, without more, did not withdraw the lands from the jurisdiction of the state; Mississippi was free to enforce its criminal and civil laws on federal land as long as the laws did not conflict with federal law. Williams v. State, 5 So. 3d 496, 2008 Miss. App. LEXIS 639 (Miss. Ct. App. 2008), cert. denied, 11 So. 3d 1250, 2009 Miss. LEXIS 135 (Miss. 2009).

OPINIONS OF THE ATTORNEY GENERAL

If the state has conceded jurisdiction over hospital lands to the federal government, then the Board of Architecture would have no authority to enforce the provisions of the Architectural Registration Law; however, if the state has not conceded jurisdiction over the subject matter, architectural services, or if jurisdiction has been relinquished by the federal government, then, possibly, the board would have that authority. Kilpatrick, Jr., June 28, 2002, A.G. Op. #02-0309.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 23, 24, 26, 29, 50.

§ 3-5-11. State forfeited tax lands may be sold to the United States for certain purposes.

The land commissioner, with the approval of the governor, is hereby authorized to sell to the United States any state forfeited tax lands held by the state which lie within the boundaries of the DeSoto National Forest, or which lie within the boundaries of any national park or game preserve; provided, however, that in the event such lands are sold to the United States under the provisions of this section, all oil, gas and other mineral rights shall be reserved to the State of Mississippi, and such reservation shall be expressly incorporated in the patent. The limitation imposed by law upon the quantity of state forfeited tax lands which may be sold to a single individual shall not apply to sales of lands to the United States government under the provisions of this section; nor shall the amount of such lands embraced in a patent to the United States be limited to one-quarter of a section.

In cases where, in the opinion of the attorneys for the United States, the title to any such land is defective, and it is desirable to take the same by condemnation in the federal court, the attorney general of the State of Mississippi is hereby authorized to accept service of summons, or other legal process, or to enter an appearance on behalf of the State of Mississippi.

HISTORY: Codes, 1942, § 4091; Laws, 1936, ch. 174.

Editor's Notes — Pursuant to section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Cross References — Quantity of public lands, building and property purchased by one person, see § 29-1-73.

Tax lands to be used for parks, see § 55-5-9.

RESEARCH REFERENCES

Am. Jur.
26 Am. Jur. 2d, Eminent Domain §§ 6 et seq.
63C Am. Jur. 2d, Public Lands §§ 95, 116.

CJS.
73B C.J.S., Public Lands §§ 240 et seq.

§ 3-5-13. National forest lands; acreage limitations; exemptions.

(1) The consent of the State of Mississippi is hereby given to the acquisition by the United States, by purchase or gift, of land within or adjacent to existing national forests in Mississippi, subject to prior approval of: (1) the board of supervisors of the county wherein such land is located, by order spread upon its minutes; and (2) the Mississippi Forestry Commission; provided, however, that not more than twenty-five thousand (25,000) acres may be acquired in the entire state under the provisions of this section and Section 3-5-15.

Provided further, that not more than five hundred (500) acres may be purchased or donated in any one (1) county outside the existing boundaries of any one (1) existing national forest.

The provisions of this section and Section 3-5-15 shall not apply to, or be construed to prohibit, any landowner owning lands in the State of Mississippi who may desire to exchange any part or all of such lands with the United States Government, or any agency thereof, within the external boundaries of an existing national forest for an equal amount of land or lands of equal value owned by the United States Government, or any agency thereof.

(2) There is hereby exempted from the provisions of this section and Section 3-5-15 any county in which State Highway No. 18 intersects State Highway No. 35 and any county in which State Highway No. 18 intersects State Highway No. 15.

(3) There is hereby exempted from the provisions of this section any lands sold and conveyed by the State of Mississippi pursuant to Laws, 1998, ch. 304, § 1.

HISTORY: Codes, 1942, §§ 4156-01, 4156-02; Laws, 1966, ch. 675, §§ 1, 2; Laws, 1998, ch. 304, § 2, eff from and after passage (approved February 25, 1998).

Editor's Notes — Laws, 1998, ch. 304, § 1 provides:

"SECTION 1. (1) The State of Mississippi may sell and convey to the United States Forestry Service, all of its right, title and interest in certain lands owned and held by the State of Mississippi for the benefit of the University of Mississippi pursuant to the act of the United States Congress dated June 30, 1894, Chapter 110, 28 Stat. 94 (1894), such lands being more particularly described as follows:

ACRES

STONE COUNTY

Township 3 South Range 9 West	
Section 4 – E ½	320
Section 28 – E ½, N ½ of NW ¼, SE ¼ of NW ¼	440
Section 29 – W ½	320
Section 31 – SE ¼, E ½ of W ½, SW ¼ of NW ¼, W ½ of SE ¼ of NE ¼	380
Section 30 – All Less SW ¼ of SW ¼	600
Section 33 – All Less SW ¼ of NE ¼	600
Township 3 South Range 10 West	
Section 25 – All Less E ½ of SE ¼	560
Section 36 – All Less SE ¼ of SE ¼, Less N ½ of SW ¼, Less SE ¼ of SW ¼, Less SW ¼ of NW ¼	440
Section 35 – All	640
Section 34 – All	640
Section 33 – All	640
Section 32 – All Less NE ¼	480
Section 31 – All Less S ½ of NW ¼, Less NW ¼ of NW ¼	520
Township 4 South Range 9 West	
Section 4 – W ½	320
Section 5 – All Less NE ¼, Less SE ¼ of NW ¼	440
Section 6 – All Less NE ¼ of NW ¼	600
Section 7 – All	640
Section 8 – All	640
Section 9 – All	640
Section 17 – N ½ of NW ¼, SW ¼ of NE ¼, N ½ of SE ¼, E ½ of NE ¼	280
Township 4 South Range 10 West	
Section 5 – All Less NE ¼ of SE ¼	600
Section 4 – N ½	320
Section 3 – N ½	320
Section 2 – All Less SW ¼ of SW ¼	600
Section 1 – All Less NW ¼ of SE ¼, Less W ½ of NE ¼, Less NE ¼ of NW ¼	480
a TOTAL	12,460

GEORGE COUNTY

Township 3 South Range 9 West	
Section 3 – All Less S ½ of NW ¼, Less SE ¼	400
Section 2 – W ½, NW ¼ of NE ¼	360
Section 10 – All	640
Section 11 – All Less W ½ of W ½	480
Section 12 – N ½ Less NE ¼ of NE ¼	280
Section 22 – S ½ Less N ½ of SE ¼	240
Section 24 – S ½ of N ½	160
Section 27 – All	640
Section 26 – All	640
Section 35 – All	640
Section 34 – All	640
Section 25 – All Less N ½ of NE ¼, Less SE ¼	400
Section 36 – NW ¼, SW ¼ of NE ¼	200
Township 2 South Range 5 West	
Section 6 – SW ¼ of SE ¼	40
Township 1 South Range 6 West	
Section 5 – NW ¼ of NE ¼, SW ¼ of SW ¼	80
Township 3 South Range 6 West	
Section 13 – SE ¼	160
Township 2 South Range 7 West	
Section 3 – SW ¼ of SE ¼	40
Section 21 – W ½ of NE ¼	80

Section 4 – NE ¼ of SE ¼	40
a TOTAL	6,160
JACKSON COUNTY	
Township 4 South Range 9 West	
Section 2 – NE ¼, NW ¼ of NW ¼	200
Section 10 – W ¾ of NW ¼	120
Section 11 – All	640
Section 12 – All Less NE ¼ of NE ¼	600
Section 13 – All	640
Section 14 – All	640
Section 15 – All	640
Township 4 South Range 8 West	
Section 19 – NE ¼ of NW ¼	40
Section 29 – SW ¼ of NE ¼	40
Section 31 – S ½ of NW ¼, NE ¼ of NW ¼	120
Section 36 – SW ¼ of SE ¼	40
Township 5 South Range 8 West	
Section 18 – E ½ Less NE ¼ of NE ¼	280
Township 5 South Range 7 West	
Section 6 – SW ¼ of SW ¼, NW ¼ of NE ¼	80
a TOTAL	4,080
TOTALS	
Stone County	12,460
George County	6,160
Jackson County	4,080
a TOTAL	22,700

"(2) Proceeds from the sale of the land described in subsection (1) of this section shall be deposited into an endowment fund established by the University of Mississippi. The principal of the fund shall remain inviolate and shall be invested by the University of Mississippi. Interest and income from the investment of the principal of the fund shall be used by the University of Mississippi exclusively for the construction of permanent improvements on the campus of the University of Mississippi and for the repair and renovation of permanent improvements on the campus of the University of Mississippi."

§ 3-5-15. National forest lands; concurrent jurisdiction; grant of power to Congress.

The State of Mississippi shall retain concurrent jurisdiction with the United States in and over such lands which have heretofore been acquired by the United States, or that may be acquired under the provisions of Sections 3-5-13 and 3-5-15, and there is reserved to the state in such lands full civil and criminal jurisdiction concurrently with the federal government in all violations of the state and federal laws, and civil process in all cases, and such criminal process as may issue under the authority of the State of Mississippi against any person charged with the commission of any crime without or within the jurisdiction heretofore acquired by the United States over such lands, may be executed thereon in like manner as before the acquisition of the land by the United States. Power is hereby conferred upon the congress of the United States to pass such laws and to make or provide for the making of such rules of both civil and criminal nature and provide punishment for violation thereof as, in its judgment, may be necessary for the management, control and protection of such lands as have heretofore been acquired by the United States or that may be acquired under the provisions of Sections 3-5-13 and 3-5-15.

HISTORY: Codes, 1942, § 4156-03; Laws, 1966, ch. 675, § 3, eff from and after passage (approved May 20, 1966).

§ 3-5-17. Municipality may lease to United States.

Any municipality owning lands that the government of the United States or any department or agency thereof, desires to use for national defense purposes may, in the discretion of the governing authorities of such municipality, lease such lands to the government of the United States of America or any department or agency thereof, for national defense purposes on such terms and conditions as the governing authorities of such municipality may agree upon, and in the event any lands are leased under the provisions of this section to the United States government, any department or agency thereof, such land shall be exempt from all taxation the same as if title thereto was vested in the United States of America.

HISTORY: Codes, 1942, § 4128; Laws, 1942, ch. 171.

RESEARCH REFERENCES

ALR.

Power of municipal corporation to lease or sublet property owned or leased by it. 47 A.L.R.3d 19.

CJS.

91 C.J.S., United States § 96.

CHAPTER 7.

COMPACT FOR A BALANCED BUDGET

Sec.
3-7-1. Compact for a balanced budget; compact provisions.

§ 3-7-1. Compact for a balanced budget; compact provisions.

The State of Mississippi enacts, adopts and agrees to be bound by the following compact:

ARTICLE I

DECLARATION OF POLICY, PURPOSE AND INTENT

WHEREAS, every State enacting, adopting and agreeing to be bound by this Compact intends to ensure that their respective Legislature's use of the power to originate a Balanced Budget Amendment under Article V of the Constitution of the United States will be exercised conveniently and with reasonable certainty as to the consequences thereof.

NOW, THEREFORE, in consideration of their expressed mutual promises and obligations, be it enacted by every State enacting, adopting and agreeing to be bound by this Compact, and resolved by each of their respective Legislatures, as the case may be, to exercise herewith all of their respective powers as set forth herein notwithstanding any law to the contrary.

ARTICLE II

DEFINITIONS

Section 1. "Compact" means this "Compact for a Balanced Budget."

Section 2. "Convention" means the convention for proposing amendments organized by this Compact under Article V of the Constitution of the United States and, where contextually appropriate to ensure the terms of this Compact are not evaded, any other similar gathering or body, which might be organized as a consequence of Congress receiving the application set out in this Compact and claim authority to propose or effectuate any amendment, alteration or revision to the Constitution of the United States. This term does not encompass a convention for proposing amendments under Article V of the Constitution of the United States that is organized independently of this Compact based on the separate and distinct application of any State.

Section 3. "State" means one of the several States of the United States. Where contextually appropriate, the term "State" shall be construed to include all of its branches, departments, agencies, political subdivisions, and officers and representatives acting in their official capacity.

Section 4. "Member State" means a State that has enacted, adopted and agreed to be bound to this Compact. For any State to qualify as a Member State with respect to any other State under this Compact, each such State must have enacted, adopted and agreed to be bound by substantively identical compact legislation.

Section 5. "Compact Notice Recipients" means the Archivist of the United States, the President of the United States, the President of the United States Senate, the Office of the Secretary of the United States Senate, the Speaker of the United States House of Representatives, the Office of the Clerk of the United States House of Representatives, the chief executive officer of each State, and the presiding officer(s) of each house of the Legislatures of the several States.

Section 6. Notice. All notices required by this Compact shall be by U.S. Certified Mail, return receipt requested, or an equivalent or superior form of notice, such as personal delivery documented by evidence of actual receipt.

Section 7. "Balanced Budget Amendment" means the following:

"Article ________

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to one hundred five percent (105%) of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds ninety-eight percent (98%) of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds (⅔) roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, “debt” means any obligation backed by the full faith and credit of the government of the United States; “outstanding debt” means all debt held in any account and by any entity at a given point in time; “authorized debt” means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; “total outlays of the government of the United States” means all expenditures of the government of the United States from any source; “total receipts of the government of the United States” means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; “impoundment” means a proposal not to spend all or part of a sum of money appropriated by Congress; and “general revenue tax” means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.”

ARTICLE III

COMPACT MEMBERSHIP AND WITHDRAWAL

Section 1. This Compact governs each Member State to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting or contrary law.

Section 2. By becoming a Member State, each such State offers, promises and agrees to perform and comply strictly in accordance with the terms and conditions of this Compact, and has made such offer, promise and agreement in anticipation and consideration of, and in substantial reliance upon, such mutual and reciprocal performance and compliance by each other current and future Member State, if any. Accordingly, in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State’s Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State.

Section 3. For purposes of determining Member State status under this Compact, as long as all other provisions of the Compact remain identical and operative on the same terms, legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed and regarded as "substantively identical" with respect to such other legislation enacted by another State notwithstanding: (a) any difference in Section 2 of Article IV with specific regard to the respectively enacting State's own method of appointing its member to the Commission; (b) any difference in Section 5 of Article IV with specific regard to the respectively enacting State's own obligation to fund the Commission; (c) any difference in Sections 1 and 2 of Article VI with specific regard to the number and identity of each delegate respectively appointed on behalf of the enacting State, provided that no more than three (3) delegates may attend and participate in the Convention on behalf of any State; or (d) any difference in Section 7 of Article X with specific regard to the respectively enacting State as to whether Section 1 of Article V of this Compact shall survive termination of the Compact, and thereafter become a continuing resolution of the Legislature of such State applying to Congress for the calling of a convention of the states under Article V of the Constitution of the United States, under such terms and limitations as may be specified by such State.

Section 4. When fewer than three-fourths (¾) of the States are Member States, any Member State may withdraw from this Compact by enacting appropriate legislation, as determined by state law, and giving notice of such withdrawal to the Compact Administrator, if any, or otherwise to the chief executive officer of each other Member State. A withdrawal shall not affect the validity or applicability of the compact with respect to remaining Member States, provided that there remain at least two (2) such States. However, once at least three-fourths (¾) of the States are Member States, then no Member State may withdraw from the Compact prior to its termination absent unanimous consent of all Member States.

ARTICLE IV

COMPACT COMMISSION AND COMPACT ADMINISTRATOR

Section 1. Nature of the Compact Commission. The Compact Commission (Commission) is hereby established. It has the power and duty: (a) to appoint and oversee a Compact Administrator; (b) to encourage States to join the Compact and Congress to call the Convention in accordance with this Compact; (c) to coordinate the performance of obligations under the Compact; (d) to oversee the Convention's logistical operations as appropriate to ensure this Compact governs its proceedings; (e) to oversee the defense and enforcement of the Compact in appropriate legal venues; (f) to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and (g) to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact. The Commission shall only have such implied powers as are essential to carrying out these express powers and duties. It shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. It may adopt and publish corresponding bylaws and policies.

Section 2. Commission Membership. The Commission initially consists of three (3) unpaid members. Each Member State may appoint one (1) member to the Commission through an appointment process to be determined by their respective chief executive officer until all positions on the Commission are filled. Positions shall be assigned to appointees in the order in which their respective appointing States became Member States. The bylaws of the Commission may expand its membership to include representatives of additional Member States and to allow for modest salaries and reimbursement of expenses if adequate funding exists.

Section 3. Commission Action. Each Commission member is entitled to one (1) vote. The Commission shall not act unless a majority of its appointed membership is present, and no action shall be binding unless approved by a majority of the Commission's appointed membership. The Commission shall meet at least once a year, and may meet more frequently.

Section 4. First Order of Business. The Commission shall at the earliest possible time elect from among its membership a Chairperson, determine a primary place of doing business, and appoint a Compact Administrator.

Section 5. Funding. The Commission and the Compact Administrator's activities shall be funded exclusively by each Member State, as determined by their respective state law, or by voluntary donations.

Section 6. Compact Administrator. The Compact Administrator has the power and duty: (a) to timely notify the States of the date, time and location of the Convention; (b) to organize and direct the logistical operations of the Convention; (c) to maintain an accurate list of all Member States, their appointed delegates, including contact information; and (d) to formulate, transmit, and maintain all official notices, records, and communications relating to this Compact. The Compact Administrator shall only have such implied powers as are essential to carrying out these express powers and duties; and shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. The Compact Administrator serves at the pleasure of the Commission and must keep the Commission seasonably apprised of the performance or nonperformance of the terms and conditions of this Compact. Any notice sent by a Member State to the Compact Administrator concerning this Compact shall be adequate notice to each other Member State provided that a copy of said notice is seasonably delivered by the Compact Administrator to each other Member State's respective chief executive officer.

Section 7. Notice of Key Events. Upon the occurrence of each of the following described events, or otherwise as soon as possible, the Compact Administrator shall immediately send the following notices to all Compact Notice Recipients, together with certified conforming copies of the chaptered version of this Compact as maintained in the statutes of each Member State: (a) whenever any State becomes a Member State, notice of that fact shall be given; (b) once at least three-fourths (¾) of the States are Member States, notice of that fact shall be given together with a statement declaring that the Legislatures of at least two-thirds (⅔) of the several States have applied for a convention for proposing amendments under Article V of the Constitution of the United States, petitioning Congress to call the Convention contemplated by this Compact, and further requesting cooperation in organizing the same in accordance with this Compact; (c) once Congress has called the Convention contemplated by this Compact, and whenever the date, time and location of the Convention has been determined, notice of that fact shall be given together with the date, time and location of the Convention and other essential logistical matters; (d) upon approval of the Balanced Budget Amendment by the Convention, notice of that fact shall be given together with the transmission of certified copies of such approved proposed amendment and a statement requesting Congress to refer the same for ratification by three-fourths (¾) of the Legislatures of the several States under Article V of the Constitution of the United States (however, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted); and (e) when any Article of this Compact prospectively ratifying the Balanced Budget Amendment is effective in any Member State, notice of the same shall be given together with a statement declaring such ratification and further requesting cooperation in ensuring that the official record confirms and reflects the effective corresponding amendment to the Constitution of the United States. However, whenever any Member State enacts appropriate legislation, as determined by the laws of the respective state, withdrawing from this Compact, the Compact Administrator shall immediately send certified conforming copies of the chaptered version of such withdrawal legislation as maintained in the statutes of each such withdrawing Member State, solely to each chief executive officer of each remaining Member State, giving notice of such withdrawal.

Section 8. Cooperation. The Commission, Member States and Compact Administrator shall cooperate with each other and give each other mutual assistance in enforcing this Compact and shall give the chief law enforcement officer of each other Member State any information or documents that are reasonably necessary to facilitate the enforcement of this Compact.

Section 9. This Article does not take effect until there are at least two (2) Member States.

ARTICLE V

RESOLUTION APPLYING FOR CONVENTION

Section 1. Be it resolved, as provided for in Article V of the Constitution of the United States, the Legislature of each Member State herewith applies to Congress for the calling of a convention for proposing amendments limited to the subject matter of proposing for ratification the Balanced Budget Amendment.

Section 2. Congress is further petitioned to refer the Balanced Budget Amendment to the States for ratification by three-fourths (¾) of their respective Legislatures.

Section 3. This Article does not take effect until at least three-fourths (¾) of the several States are Member States.

ARTICLE VI

DELEGATE APPOINTMENT, LIMITATIONS AND INSTRUCTIONS

Section 1. Number of Delegates. Each Member State shall be entitled to one (1) delegate as its sole and exclusive representative at the Convention as set forth in this Article.

Section 2. Identity of Delegates. Each Member State's chief executive officer, who is serving on the enactment date of this Compact, is appointed in an individual capacity to represent his or her respective State at the Convention as its sole and exclusive delegate.

Section 3. Replacement or Recall of Delegates. A delegate appointed hereunder may be replaced or recalled by the Legislature of his or her respective State at any time for good cause, such as criminal misconduct or the violation of this Compact. If replaced or recalled, any delegate previously appointed hereunder must immediately vacate the Convention and return to their respective State's capitol.

Section 4. Oath. The power and authority of a delegate under this Article may only be exercised after the Convention is first called by Congress in accordance with this Compact and such appointment is duly accepted by such appointee publicly taking the following oath or affirmation: "I do solemnly swear (or affirm) that I accept this appointment and will act strictly in accordance with the terms and conditions of the Compact for a Balanced Budget, the Constitution of the State I represent, and the Constitution of the United States. I understand that violating this oath (or affirmation) forfeits my appointment and may subject me to other penalties as provided by law."

Section 5. Term. The term of a delegate hereunder commences upon acceptance of appointment and terminates upon the permanent adjournment of the Convention, unless shortened by recall, replacement or forfeiture under this Article. Upon expiration of such term, any person formerly serving as a delegate must immediately withdraw from and cease participation at the Convention, if any is proceeding.

Section 6. Delegate Authority. The power and authority of any delegate appointed hereunder is strictly limited: (a) to introducing, debating, voting upon, proposing and enforcing the Convention Rules specified in this Compact, as needed to ensure those rules govern the Convention; and (b) to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment. All actions taken by any delegate in violation of this section are void ab initio.

Section 7. Delegate Authority. No delegate of any Member State may introduce, debate, vote upon, reject or propose for ratification any constitutional amendment at the Convention unless: (a) the Convention Rules specified in this Compact govern the Convention and their actions; and (b) the constitutional amendment is the Balanced Budget Amendment.

Section 8. Delegate Authority. The power and authority of any delegate at the Convention does not include any power or authority associated with any other public office held by the delegate. Any person appointed to serve as a delegate shall take a temporary leave of absence, or otherwise shall be deemed temporarily disabled, from any other public office held by the delegate while attending the Convention, and may not exercise any power or authority associated with any other public office held by the delegate, while attending the Convention. All actions taken by any delegate in violation of this section are void ab initio.

Section 9. Order of Business. Before introducing, debating, voting upon, rejecting or proposing for ratification any constitutional amendment at the Convention, each delegate of every Member State must first ensure the Convention Rules in this Compact govern the Convention and their actions. Every delegate and each Member State must immediately vacate the Convention and notify the Compact Administrator by the most effective and expeditious means if the Convention Rules in this Compact are not adopted to govern the Convention and their actions.

Section 10. Forfeiture of Appointment. If any Member State or delegate violates any provision of this Compact, then every delegate of that Member State immediately forfeits his or her appointment, and shall immediately cease participation at the Convention, vacate the Convention, and return to his or her respective State's capitol.

Section 11. Expenses. A delegate appointed hereunder is entitled to reimbursement of reasonable expenses for attending the Convention from his or her respective Member State. No delegate may accept any other form of remuneration or compensation for service under this Compact.

ARTICLE VII

CONVENTION RULES

Section 1. Nature of the Convention. The Convention shall be organized, construed and conducted as a body exclusively representing and constituted by the several States.

Section 2. Agenda of the Convention. The agenda of the Convention shall be entirely focused upon and exclusively limited to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment under the Convention Rules specified in this Article and in accordance with the Compact. It shall not be in order for the Convention to consider any matter that is outside the scope of this agenda.

Section 3. Delegate Identity and Procedure. States shall be represented at the Convention through duly appointed delegates. The number, identity and authority of delegates assigned to each State shall be determined by this Compact in the case of Member States or, in the case of States that are not

Member States, by their respective state laws. However, to prevent disruption of proceedings, no more than three (3) delegates may attend and participate in the Convention on behalf of any State. A certified chaptered conforming copy of this Compact, together with government-issued photographic proof of identification, shall suffice as credentials for delegates of Member States. Any commission for delegates of States that are not Member States shall be based on their respective state laws, but it shall furnish credentials that are at least as reliable as those required of Member States.

Section 4. Voting. Each State represented at the Convention shall have one (1) vote, exercised by the vote of that State's delegate in the case of States represented by one delegate, or, in the case of any State that is represented by more than one delegate, by the majority vote of that State's respective delegates.

Section 5. Quorum. A majority of the several States of the United States, each present through its respective delegate in the case of any State that is represented by one (1) delegate, or through a majority of its respective delegates, in the case of any State that is represented by more than one (1) delegate, shall constitute a quorum for the transaction of any business on behalf of the Convention.

Section 6. Action by the Convention. The Convention shall only act as a committee of the whole, chaired by the delegate representing the first State to have become a Member State, if that State is represented by one (1) delegate, or otherwise by the delegate chosen by the majority vote of that State's respective delegates. The transaction of any business on behalf of the Convention, including the designation of a Secretary, the adoption of parliamentary procedures and the rejection or proposal of any constitutional amendment, requires a quorum to be present and a majority affirmative vote of those States constituting the quorum.

Section 7. Emergency Suspension and Relocation of the Convention. In the event that the Chair of the Convention declares an emergency due to disorder or an imminent threat to public health and safety prior to the completion of the business on the Agenda, and a majority of the States present at the Convention do not object to such declaration, further Convention proceedings shall be temporarily suspended, and the Commission shall subsequently relocate or reschedule the Convention to resume proceedings in an orderly fashion in accordance with the terms and conditions of this Compact with prior notice given to the Compact Notice Recipients.

Section 8. Parliamentary Procedure. In adopting, applying and formulating parliamentary procedure, the Convention shall exclusively adopt, apply or appropriately adapt provisions of the most recent editions of Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure. In adopting, applying or adapting parliamentary procedure, the Convention shall exclusively consider analogous precedent arising within the jurisdiction of the United States. Parliamentary procedures adopted, applied or adapted pursuant to this section shall not obstruct, override or otherwise conflict with this Compact.

Section 9. Transmittal. Upon approval of the Balanced Budget Amendment by the Convention to propose for ratification, the Chair of the Convention shall immediately transmit certified copies of such approved proposed amendment to the Compact Administrator and all Compact Notice Recipients, notifying them respectively of such approval and requesting Congress to refer the same for ratification by the States under Article V of the Constitution of the United States. However, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted as aforesaid.

Section 10. Transparency. Records of the Convention, including the identities of all attendees and detailed minutes of all proceedings, shall be kept by the Chair of the Convention or Secretary designated by the Convention. All proceedings and records of the Convention shall be open to the public upon request subject to reasonable regulations adopted by the Convention that are closely tailored to preventing disruption of proceedings under this Article.

Section 11. Adjournment of the Convention. The Convention shall permanently adjourn upon the earlier of twenty-four (24) hours after commencing proceedings under this Article or the completion of the business on its Agenda.

ARTICLE VIII

PROHIBITION ON ULTRA VIRES CONVENTION

Section 1. Member States shall not participate in the Convention unless: (a) Congress first calls the Convention in accordance with this Compact; and (b) the Convention Rules of this Compact are adopted by the Convention as its first order of business.

Section 2. Any proposal or action of the Convention is void ab initio and issued by a body that is conducting itself in an unlawful and ultra vires fashion if that proposal or action: (a) violates or was approved in violation of the Convention Rules or the delegate instructions and limitations on delegate authority specified in this Compact; (b) purports to propose or effectuate a mode of ratification that is not specified in Article V of the Constitution of the United States; or (c) purports to propose or effectuate the formation of a new government. All Member States are prohibited from advancing or assisting in the advancement of any such proposal or action.

Section 3. Member States shall not ratify or otherwise approve any proposed amendment, alteration or revision to the Constitution of the United States, which originates from the Convention, other than the Balanced Budget Amendment.

ARTICLE IX

RESOLUTION PROSPECTIVELY RATIFYING THE BALANCED BUDGET AMENDMENT

Section 1. Each Member State, by and through its respective Legislature, hereby adopts and ratifies the Balanced Budget Amendment.

Section 2. This Article does not take effect until Congress effectively refers the Balanced Budget Amendment to the States for ratification by three-fourths (¾) of the Legislatures of the several States under Article V of the Constitution of the United States.

ARTICLE X

CONSTRUCTION, ENFORCEMENT, VENUE, AND SEVERABILITY

Section 1. To the extent that the effectiveness of this Compact or any of its Articles or provisions requires the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed to waive, repeal, supersede, or otherwise amend and conform all such rules, policies or procedures to allow for the effectiveness of this Compact to the fullest extent permitted by the constitution of any affected Member State.

Section 2. Date and Location of the Convention. Unless otherwise specified by Congress in its call, the Convention shall be held in Dallas, Texas and commence proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the latter of the effective date of Article V of this Compact or the enactment date of the Congressional resolution calling the Convention.

Section 3. In addition to all other powers and duties conferred by state law which are consistent with the terms and conditions of this Compact, the chief law enforcement officer of each Member State is empowered to defend the Compact from any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief to enforce this Compact; and shall take such action whenever the Compact is challenged or violated.

Section 4. The exclusive venue for all actions in any way arising under this Compact shall be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of the foregoing district court. Each Member State shall submit to the jurisdiction of said courts with respect to such actions. However, upon written request by the chief law enforcement officer of any Member State, the Commission may elect to waive this provision for the purpose of ensuring an action proceeds in the venue that allows for the most convenient and effective enforcement or defense of this Compact. Any such waiver shall be limited to the particular action to which it is applied and not construed or relied upon as a general waiver of this provision. The waiver decisions of the Commission under this provision shall be final and binding on each Member State.

Section 5. The effective date of this Compact and any of its Articles is the latter of: (a) the date of any event rendering the same effective according to its respective terms and conditions; or (b) the earliest date otherwise permitted by law.

Section 6. Article VIII of this Compact is hereby deemed non- severable prior to termination of the Compact. However, if any other phrase, clause, sentence or provision of this Compact, or the applicability of any other phrase, clause, sentence or provision of this Compact to any government, agency, person or circumstance, is declared in a final judgment to be contrary to the Constitution of the United States, contrary to the state constitution of any Member State, or is otherwise held invalid by a court of competent jurisdiction, such phrase, clause, sentence or provision shall be severed and held for naught, and the validity of the remainder of this Compact and the applicability of the remainder of this Compact to any government, agency, person or circumstance shall not be affected. Furthermore, if this Compact is declared in a final judgment by a court of competent jurisdiction to be entirely contrary to the state constitution of any Member State or otherwise entirely invalid as to any Member State, such Member State shall be deemed to have withdrawn from the Compact, and the Compact shall remain in full force and effect as to any remaining Member State. Finally, if this Compact is declared in a final judgment by a court of competent jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the Constitution of the United States, then it shall be construed and enforced solely as reciprocal legislation enacted by the affected Member State(s).

Section 7. Termination. This Compact shall terminate and be held for naught when the Compact is fully performed and the Constitution of the United States is amended by the Balanced Budget Amendment. However, notwithstanding anything to the contrary set forth in this Compact, in the event such amendment does not occur within seven (7) years after the first State passes legislation enacting, adopting and agreeing to be bound to this Compact, the Compact shall terminate as follows: (a) the Commission shall dissolve and wind up its operations within ninety (90) days thereafter, with the Compact Administrator giving notice of such dissolution and the operative effect of this section to the Compact Notice Recipients; and (b) upon the completed dissolution of the Commission, this Compact shall be deemed terminated, repealed, void ab initio, and held for naught.

HISTORY: Laws, 2015, ch. 331, § 1, eff from and after passage (approved Mar. 13, 2015).

Comparable Laws from other States — Alaska: Alaska Stat. §§ 44.99.600, 44.99.610
Arizona: A.R.S. § 41-451
Georgia: O.C.G.A. § 50-38-1
North Dakota: N.D. Cent. Code, § 54-03.3-01

TITLE 5.

LEGISLATIVE DEPARTMENT

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Chapter 3. Legislative Committees. 5-3-1
Chapter 5. Interstate Cooperation. 5-5-1
Chapter 7. Lobbying [Repealed].
Chapter 8. Lobbying Law Reform Act of 1994. 5-8-1
Chapter 9. Agency Review. 5-9-1
Chapter 11. Abolishment of Agencies. 5-11-1

CHAPTER 1.

LEGISLATURE

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5-1-2. Nomination and election of representatives by posts in districts having more than one representative.
5-1-3. Apportionment of senators.
5-1-4. Nomination and election of senators by posts in districts where more than one senator is to be elected.
5-1-5. Qualified person may be candidate for state senator; election conducted on senatorial district basis; names on ballots.
5-1-7. Holding of meetings.
5-1-9. Organization of the house of representatives.
5-1-11. Election of officers of house of representatives.
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5-1-15. Election of officers of the senate.
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Sec.
5-1-57. Legislative Extraordinary Session Expense Revolving Fund.
5-1-59. Renumeration of witnesses for state.
5-1-61. Joint convention; place and time of assemblage.
5-1-63. Joint convention; limitation on powers.
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5-1-77. Mail carrier and distributor for legislature.
5-1-79. Repealed.
5-1-81. Location of post office.
5-1-83. Capitol Commission to fit up post office.
5-1-85. Publication of fiscal note for certain bills or concurrent resolutions.

§ 5-1-1. Apportionment of representatives.

The number of Representatives shall be one hundred twenty-two (122) and shall be elected from districts adopted as provided in Section 254 of the Mississippi Constitution of 1890.

HISTORY: Codes, 1930, § 5329; 1942, §§ 3326, 3326.1; Laws, 1940, ch. 275; Laws, 1954, ch. 317; Laws, 1955, Ex. ch. 91; Laws, 1956, ch. 408; Laws, 1960, ch. 403; Laws, 1962, ch. 577; Laws, 1963, 1st Ex Sess. ch. 34, §§ 3-7; Laws, 1964, ch. 483; Laws, 1966 Ex Sess. ch. 41, § 2; Laws, 1971, ch 394 § 1; Laws, 1973, ch. 304, § 1; Laws, 1973, ch. 456, § 1; Laws, 1975, ch. 510, § 1; Laws, 1977, 2d Ex Sess, ch. 25, § 1; Laws, 1978, ch. 515, § 1; Laws, 1982, ch. 306, § 1; Laws, 2002, ch. 568, § 1, eff from and after July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Chapter 2233, Laws of 2012 (Joint Resolution No. 1), entitled "A JOINT RESOLUTION TO REAPPORTION THE HOUSE OF REPRESENTATIVES OF THE STATE OF MISSISSIPPI IN ACCORDANCE WITH SECTION 254, MISSISSIPPI CONSTITUTION OF 1890; AND FOR RELATED PURPOSES," adopted by the House of Representatives on April 26, 2012, and by the Senate on May 2, 2012, and effective from and after September 14, 2012 (the date the United States Attorney General interposed no objection to the Joint Resolution), provides as follows:

"WHEREAS, Section 254, Mississippi Constitution of 1890, requires that the Mississippi Legislature shall apportion itself by joint resolution in the second year following the 1980 decennial census and every ten (10) years thereafter; and

"WHEREAS, it is the responsibility and official mandate of the Legislature to reapportion the state in compliance with the one-person, one-vote requirement of the federal Constitution into election districts as nearly equal as possible according to population and in accordance with other factors heretofore pronounced by the courts; and

"WHEREAS, Section 254, Mississippi Constitution of 1890, provides that the House of Representatives shall consist of not more than one hundred twenty-two (122) representatives, the number of members to be determined by the Legislature:

"NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the Mississippi House of Representatives shall consist of one hundred twenty-two (122) representatives who shall be elected from one hundred twenty-two (122) single-member districts, composed as follows:

"DISTRICT 1 -

"Alcorn County - Central *, East Third Street *, Five-Point, Glen and North Corinth * Precincts.

"Tishomingo County - Burnsville, Coles Mill, East Iuka, Hubbard-Salem, Iuka, North Burnsville, North Iuka, Paden, Spring Hill, West Burnsville, West Iuka and West Tishomingo Precincts.

"DISTRICT 2 -

"Alcorn County - Biggersville, Central *, College Hill, East Corinth, East Third Street *, Kossuth, North Corinth *, South Corinth, Union Center *, Wenasoga and West Corinth Precincts.

"DISTRICT 3 -

"Alcorn County - Jacinto and Rienzi Precincts.

"Prentiss County - Blackland, Booneville, Crossroads, East Booneville, Hills Chapel-New Hope, Marietta, New Site, North Booneville, adorn Hill, Thrasher, Tuscumbia-New Chandler, West Booneville and Wheeler * Precincts.

"DISTRICT 4 -

"Alcorn County - Bethel and Union Center * Precincts.

"Tippah County - All.

"DISTRICT 5 -

"Benton County - Ashland * and Lamar * Precincts.

"Lafayette County - Abbeville * Precinct.

"Marshall County - Cayce *, Chulahoma, Hudsonville, Laws Hill, Marianna, North Holly Springs District 1, North Holly Springs District 2 *, South Holly Springs, Victoria, Wall Hill, Warsaw, Waterford, Watson and West Holly Springs Precincts.

"Tate County - Independence * Precinct.

"DISTRICT 6 -

"DeSoto County - Fairhaven, Mineral Wells *, Olive Branch North, Olive Branch South, Olive Branch West * and Pleasant Hill South * Precincts.

"DISTRICT 7 -

"DeSoto County - Elmore, Greenbrook North, Greenbrook South, Mineral Wells *, Plum Point and Southhaven North Precincts.

"DISTRICT 8 -

"Lafayette County - Harmontown Precinct.

"Tate County - Coldwater, Independence *, Palestine, Poagville 4, Poagville 5, Sarah, Senatobia 3 *, Senatobia No.1, Senatobia No.2, Sherrod, Strayhorn, Thyatira, Tyro and Wyatte Precincts.

"DISTRICT 9 -

"Coahoma County - Coahoma, Friar's Point and Lula Precincts.

"Quitman County - Belen, Crenshaw, Crowder, Darling, District 3 North, District 3 South, Lambert, Northwest Marks, Sledge and Southwest Marks Precincts.

"Tate County - Arkabutla, Evansville and Taylor Precincts.

"Tunica County - All.

"DISTRICT 10 -

"Lafayette County - Airport Grocery, Anchor-Taylor 4, Burgess, College Hill, Oxford 4 *, Taylor 3, Union West, West Spring Hill-Oxford 3 * Precincts.

"Panola County - Cold Springs, Coles Point, East Batesville 4, East Batesville 5, East Sardis, Eureka, North Batesville A *, North Springport, Pope, South Springport and Tocowa Precincts.

"Tallahatchie County - Enid and Teasdale Precincts.

"DISTRICT 11 -

"Panola County - Batesville 3, Como, Courtland, Crenshaw, Curtis, Enon, Longtown, Macedonia-Concord, North Batesville A *, North Batesville B, Pleasant Grove, Pleasant Mount, South Sardis and West Sardis Precincts.

"Tate County - Looxahoma, Senatobia 3 * and Senatobia No. 4 Precincts.

"DISTRICT 12 -

"Lafayette County - Oxford 1 *, Oxford 2 *, Oxford 4 *, Oxford 6 *, and West Spring Hill-Oxford 3 * Precincts.

"DISTRICT 13 -

"Benton County - Ashland *, Canaan, Floyd, Hickory Flat and Lamar * Precincts.

"Lafayette County - Abbeville *, Lafayette Springs, Oxford 1 *, Oxford 2 *, Oxford 6 *, Philadelphia and Yocona Precincts.

"Marshall County - Bethlehem, Cornersville, Early Grove and Potts Camp Precincts.

"Union County - Blythe, Macedonia, Pinedale and West Union Precincts.

"DISTRICT 14 -

"Union County - B.F. Ford, Beacon Hill, Blue Springs, Center, Central Maintenance, Courthouse, East Union, Glenfield, Ingomar, Keownville, Kings Chapel, Myrtle, Northeast MS Community College, Pleasant Ridge and Sportsplex Precincts.

"DISTRICT 15 -

"Pontotoc County - Algoma, Bethel, Buchanan, Cherry Creek, Ecru, Friendship, Hurricane, Judah, North Randolph, Oak Hill, Pontotoc 1, Pontotoc 2, Pontotoc 3, Pontotoc 4, Pontotoc 5, Robbs, Sherman, South Randolph, Springville, Thaxton, Toccopola and Turnpike Precincts.

"DISTRICT 16 -

"Lee County - Brewer, Oak Hill *, Old Union *, Palmetto

"A & B *, Plantersville, Pleasant Grove *, Shannon, Tupelo 3 *, Tupelo 4 North *, Tupelo 4 South, Tupelo 5 and Verona Precincts.

"Monroe County - Nettleton * Precinct.

"DISTRICT 17 -

"Lee County - Belden *, Bissell, Old Union *, Palmetto

"A & B *, Pleasant Grove *, Tupelo 2, Tupelo 3 * and Tupelo 4

"North * Precincts.

"DISTRICT 18 -

"Lee County - Baldwin, Beech Springs *, Belden *, Birmingham Ridge, Blair, Corrona, Davis Box, Euclautubba, Flowerdale, Guntown, Pratts, Saltillo and Tupelo 1 Precincts.

"Prentiss County - Baldwyn, Ingram and Wheeler * Precincts.

"Union County - Jericho Precinct.

"DISTRICT 19 -

"Itawamba County - Centerville, Dorsey, Fawn Grove, Kirkville, Mantachie, Ozark and Ratliff Precincts.

"Lee County - Auburn, Beech Springs *, East Heights, Eggville, Fellowship, Friendship, Gilvo 1, Gilvo 5, Hebron,

"Kedron, Mooreville 1, Mooreville 5, Oak Hill *, Richmond and Unity Precincts.

"DISTRICT 20 -

"Itawamba County - Bigbee Fork * Precinct.

"Lee County - Nettleton and Petersburg Precincts.

"Monroe County - Amory 1, Amory 2, Amory 5, Athens, Becker, Bigbee 1, Boyds, Central Grove *, Greenwood Springs *, Hatley, Nettleton *, Parham, Smithville, Williams and Wren * Precincts.

"DISTRICT 21 -

"Itawamba County - Armory, Bigbee Fork *, Bounds, Cardsville, Carolina, Clay, Copeland, Evergreen, Friendship, Fulton District 1 Courthouse, Fulton District 4 American Legion, Fulton District 5 Firestation, Greenwood, Hampton, James Creek, Mt. Gilead, New Salem, Oakland, Pineville, Pleasanton, Ryan, Tilden, Tremont, Turon and Wigginton Precincts.

"Tishomingo County - Belmont, Cotton Springs, Dennis, East Belmont, Golden, North Belmont and Tishomingo Precincts.

"DISTRICT 22 -

"Chickasaw County - All.

"Pontotoc County - Bankhead, Beckham, Hoyle, Longview, Troy, Woodland and Zion

Precincts.

"DISTRICT 23 -

"Calhoun County - All.

"Grenada County - Futheyville, Gore Springs, Grenada Box 1, Mt. Nebo and Pleasant Grove Precincts.

"Lafayette County - Paris and Tula Precincts.

"Webster County - Bellefontaine, Clarkson, Cumberland, Fame, Mantee and Walthall Precincts.

"DISTRICT 24 -

"DeSoto County - Aldens, Bridgetown, DeSoto Central, Nesbit East, Olive Branch West *, Pleasant Hill North, Pleasant Hill South * and Southhaven South * Precincts.

"DISTRICT 25 -

"DeSoto County - Endora, Horn Lake Central, Horn Lake Intermediate School, Horn Lake South, Lake Cormorant, Nesbit West, Oak Grove and Walls Precincts.

"DISTRICT 26 -

"Bolivar County - Duncan/Alligator Precinct.

"Coahoma County - Bobo, Cagle Crossing, Clarksdale 1-4, Clarksdale 2-4, Clarksdale 3-3, Clarksdale 3-4, Clarksdale 4-2, Clarksdale 4-3, Clarksdale 5-4, Dublin, Farrell, Jonestown, Lyons, Rena Lara, Roundaway and Sherard Precincts.

"DISTRICT 27 -

"Attala County - Aponaug *, Newport, Northeast *, Northwest *, South Central * and Southwest * Precincts.

"Leake County - Conway, North Carthage *, Ofahoma, South Carthage *, Thomastown, Walnut Grove, West Carthage * and Wiggins Precincts.

"Madison County - Camden, Cameron, Couparle, Luther Branson School, Ratliff Ferry and Sharon Precincts.

"Yazoo County - Deasonville, East Midway and Harttown Precincts.

"DISTRICT 28 -

DeSoto County - Alphaba Cockrum, Hernando Central, Hernando East, Hernando West, Ingram's Mill, Lewisburg East, Lewisburg West and Love Precincts.

"DISTRICT 29 -

"Bolivar County - Benoit, Beulah, Cleveland Eastgate, East Central Cleveland, East Cleveland, East Rosedale, Gunnison, Merigold, Mound Bayou, North Cleveland, Northwest Cleveland, Pace, Renova, Shelby, South Cleveland, West Cleveland, West Rosedale and Winstonville Precincts.

"Sunflower County - Sunflower Plantation Precinct.

"DISTRICT 30 -

"Bolivar County - Boyle, Cleveland Courthouse, Shaw * and West Central Cleveland Precincts.

"Quitman County - West Lambert Precinct.

"Sunflower County - Drew, Rome, Ruleville and Ruleville North Precincts.

"Tallahatchie County - Glendora, Sumner Beat 2, Sumner Beat 5, Tutwiler, Webb Beat 2, Webb Beat 4 and Webb Beat 5 Precincts.

"DISTRICT 31 -

"Bolivar County - Choctaw and Shaw * Precincts.

"Humphreys County - Four Mile and North Belzoni * Precincts.

"Sunflower County - Boyer-Linn, Doddsville, Fairview-Hale, Indianola 2 East, Indianola 2 West, Indianola 3 North, Indianola 3 Northeast, Indianola 3 South, Indianola Southeast, Inverness, Moorhead, Sunflower 3 and Sunflower 4 Precincts.

"Washington County - Leland Health Department Clinic and Leland Rotary Club Precincts.

"DISTRICT 32 -

"Leflore County - Central Greenwood, East Greenwood, Mississippi Valley State University, North Greenwood *, Northeast Greenwood, Rising Sun, Sidon, South Greenwood, Southeast Greenwood, Southwest Greenwood and West Greenwood

Precincts.

"DISTRICT 33 -

"Grenada County - Geeslin, Grenada Box 2 *, Grenada Box 3 * and Hardy Precincts.

"Tallahatchie County - Blue Cane, Brazil, Cascilla, Charleston Beat 1, Charleston Beat 2, Charleston Beat 3, Leverette, Murphreesboro, Paynes, Rosebloom, Springhill and Tippo Precincts.

"Yalobusha County - All.

"DISTRICT 34 -

"Carroll County - 430 School and Black Hawk Precincts.

"Grenada County - Elliott, Grenada Box 2 *, Grenada Box 3 *,

"Grenada Box 4, Grenada Box 5, Holcomb, Sweethome and Tie Plant Precincts.

"Holmes County - Acona, Cruger and Tchula Precincts.

"Leflore County - Minter City, Morgan City/Swiftown, North Itta Bena, Schlater and South Itta Bena Precincts.

"Tallahatchie County - Philipp Precinct.

"DISTRICT 35 -

"Attala County - Ethel *, McCool and Thompson Precincts.

"Choctaw County - All.

"Webster County - Big Black, Eupora 1, Eupora 2, Eupora 3, Grady, Maben, Mathiston and Tomnolen Precincts.

"Winston County - County Agent *, Fairground *, Mars Hill, Mill Creek *, Nanih Waiya *, New National Guard Armory, Noxapater, Shiloh and Walthall * Precincts.

"DISTRICT 36 -

"Clay County - Cairo, Caradine, Central West Point *, East West Point *, North West Point, Pine Bluff, Siloam *, Tibbee *, Union Star, Vinton and West West Point * Precincts.

"Monroe County - Aberdeen 3, Central Grove *, Darracott, Gibson, North Aberdeen 4, Prairie, South Aberdeen 4, Willis and Wren * Precincts.

"DISTRICT 37 -

"Clay County - Cedar Bluff *, Central West Point *, East West Point *, Pheba, Siloam *, South West Point *, Tibbee * and West West Point * Precincts.

"Lowndes County - Fairgrounds F, Fairgrounds G, Fairgrounds B, Fairgrounds E, New Hope A, New Hope B, New Hope C, New Hope D, New Hope E, New Hope F, Plum Grove B, Rural Hill A, Rural Hill B, Rural Hill C, Sale C, Steens A, Steens B, Steens C and West Lowndes A Precincts.

"Oktibbeha County - Center Grove, Double Springs, Maben and Self Creek Precincts.

"DISTRICT 38 -

"Clay County - Cedar Bluff *, Central West Point * and South West Point * Precincts.

"Lowndes County - Artesia Precinct.

"Oktibbeha County - Bell Schoolhouse, Central Starkville *, Gillespie Street Center *, Hickory Grove, North Starkville 2, North Starkville 3 *, Oktoc, Osborn, Sessums, South Longview *, South Starkville *, Southeast Oktibbeha and West Starkville * Precincts.

"DISTRICT 39 -

"Lowndes County - Air Base A, Air Base B, Air Base C, Air Base D, Air Base E, Brandon A, Brandon C, Caledonia, Dowdle Gas Training Center B and Lee Middle School Precincts.

"Monroe County - Bartahatchie, Greenwood Springs *, Hamilton and Lackey Precincts.

"DISTRICT 40 -

"DeSoto County - Cherry Valley, Horn Lake East, Horn Lake North, Horn Lake West, Southhaven South * and Southhaven West Precincts.

"DISTRICT 41 -

"Lowndes County - Brandon B, Brandon D, Coleman A, Coleman B, Columbus High School A, Columbus High School B, Columbus High School C, Columbus High School D, Fairgrounds A, Fairgrounds C, Fairgrounds D, Hunt A, Hunt B, Hunt C, Mitchell A, Mitchell B, Plum Grove C, Propst Park Community Hut, Sale A, Sale B, Trinity A, Trinity B, Union Academy A, Union Academy B, Union Academy C, University A, University B and West Lowndes B Precincts.

"DISTRICT 42 -

"Lowndes County - Crawford A and Plum Grove A Precincts.

"Noxubee County - All.

"Winston County - American Legion, County Agent *, East Winston, Fairground *, Lovorn Tractor, Mill Creek *, Wathall * and Zion Ridge Precincts.

"DISTRICT 43 -

"Oktibbeha County - Bradley, Central Starkville *, Craig Springs, East Starkville, Gillespie Street Center *, North Adaton, North Longview, North Starkville 3 *, Northeast Starkville, South Adaton, South Longview *, South Starkville *, Sturgis and West Starkville * Precincts.

"Winston County - Fairground * Precinct.

"DISTRICT 44 -

"Leake County - Salem Precinct.

"Neshoba County - Arlington, Burnside *, Center *, County Line, Deemer, Dixon, East Neshoba *, Fairview, Forestdale, Fork, Fusky, Hays, Herbert, Hope, House, McDonald, Neshoba, North Bend *, Northeast Philadelphia *, Pearl River, Southeast Philadelphia, Southwest Philadelphia, Tucker District 1, Tucker District 3 and Zephyr Hill Precincts.

"DISTRICT 45 -

"Kemper County - All.

"Lauderdale County - Precincts 5 *, 6 *, Andrews Chapel *, Center Ridge, Daleville, East Lauderdale, East Marion, Kewanee, Marion and West Dalewood.

"Neshoba County - Bogue Chitto, Burnside *, Center *, East Neshoba *, North Bend *, Northeast Philadelphia * and Northwest Philadelphia Precincts.

"Winston County - Nanih Waiya * Precinct.

"DISTRICT 46 -

"Carroll County - Calvary, Carrollton, Fire Tower, Gravel Hill, Jefferson, McCarley, North Carrollton, Ray's Shop, Salem, West Carroll and West Vaiden Precincts.

"Grenada County - Providence Precinct.

"Leflore County - Money and North Greenwood * Precincts.

"Montgomery County - All.

"Webster County - Bluff Springs, Cadaretta and Fay Precincts.

"DISTRICT 47 -

"Attala County - McAdams and Sallis Precincts.

"Holmes County - Beat 4 Walden Chapel, Coxburg, Durant *, Ebenezer, Goodman, Lexington Beat 1, Lexington Beat 4, Lexington Beat 5, Lexington East, Pickens, Sandhill and Thornton Precincts.

"Yazoo County - Benton, Eden, Free Run, Ward 4 *, West Midway and Zion Precincts.

"DISTRICT 48 -

"Attala County - Aponaug *, Berea, Carmack, East, Ethel *, Hesterville, Liberty Chapel, North Central, Northeast *, Northwest *, Possumneck, Providence, South Central *, Southwest *, Williamsville and Zama Precincts.

"Carroll County - East Vaiden Precinct.

"Holmes County - Durant * and West Precincts.

"Leake County - East Carthage, Ebenezer, Edinburg, Freeny, Madden, North Carthage *, Renfroe, Singleton, South Carthage *, Sunrise and West Carthage * Precincts.

"DISTRICT 49 -

"Washington County - American Legion *, Brent Center, Buster Brown Community Center *, Christ Wesleyan Methodist Church, Extension Building, Greenville Industrial College *, Potter House Church, St. James Episcopal Church, Swiftwater Baptist

Church *, Tampa Drive and Wards Recreation Center * Precincts.

"DISTRICT 50 -

"Bolivar County - Longshot, Scott, Skene and Stringtown Precincts.

"Issaquena County - Addie, Grace, Mayersville and Tallula * Precincts.

"Washington County - American Legion *, Arcola City Hall, Buster Brown Community Center *, Darlove Baptist Church, Elks Club, Glen Allan Health Clinic, Grace Methodist Church, Greenville Industrial College *, Hollandale City Hall, Metcalfe City Hall, Swiftwater Baptist Church * and Wards Recreation Center * Precincts.

"DISTRICT 51 -

"Humphreys County - Central Belzoni, Gooden Lake, Isola, Lake City (28053302), Louise, Midnight, North Belzoni *, Northwest Belzoni, Putnam, Silver City, Southeast Belzoni and Southwest Belzoni Precincts.

"Sharkey County - All.

"Yazoo County - 3-1 West, 3-2 East, 3-3 Jonestown, Carter, District 4 Ward 2, Holly Bluff, Lake City, Ward 2, Ward 4 * and Ward 5 Precincts.

"DISTRICT 52 -

"DeSoto County - Hack's Cross and Miller Precincts.

"Marshall County - Barton, Byhalia, Cayce *, Mt. Pleasant, North Holly Springs District 2 *, North Cayce, Redbanks and Slayden Precincts.

"DISTRICT 53 -

"Franklin County - Bad Bayou, Cains, Eddiceton, Lucien and McCall Creek Precincts.

"Jefferson Davis County - Hawthorn * Precinct.

"Lawrence County - Center, Cooper's Creek, Jayess, Oakvale, Tilton and Topeka Precincts.

"Lincoln County - Alexander Jr. High, Arlington, Bogue Chitto, Brignal, City Hall, East Lincoln, Enterprise, Fair River, Forrestry, Government Complex, High School, Johnson, New Pearlhaven, Norfield, Rogers Circle and Ruth Precincts.

"Pike County - Precincts 14 and 20.

"DISTRICT 54 -

"Issaquena County - Tallula * and Valley Park Precincts.

"Warren County - 3-61 Store, Beechwood, Bovina, Culkin, Kings *, Oak Ridge, Plumbers Hall, Redwood and Tingleville * Precincts.

"Yazoo County - 3-4 South, Center Ridge, Dover, East Bentonia, Fairview, Fugates, Robinette, Satartia, Tinsley and Valley Precincts.

"DISTRICT 55 -

"Warren County - American Legion Hall, Auditorium, Brunswick, Cedar Grove, Elks Lodge, Jett, Kings *, No.7 Fire Station, St. Aloysius, Tingleville *, Vicksburg Jr. High School and Y.M.C.A. Precincts.

"DISTRICT 56 -

"Hinds County - Clinton 1, Clinton 2, Clinton 3, Clinton 4, Clinton 5, Pinehaven * and Tinnin Precincts.

"Madison County - Flora *, Gluckstadt *, Lorman-Cavalier *, Smith School and Whispering Lake * Precincts.

"DISTRICT 57 -

"Madison County - Bear Creek, Bible Church, Canton Precinct 1, Canton Precinct 2, Canton Precinct 3, Canton Precinct 4, Canton Precinct 5, Canton Precinct 7, Cedar Grove, Liberty, Madison County Baptist Family Life Center, Magnolia Heights, New Industrial Park and Virlilia Precincts.

"DISTRICT 58 -

"Madison County - Cobblestone, Madison 1, Madison 2, Madison 3, NorthBay, Ridgeland Tennis Center, Trace Harbor and Victory Baptist Church Precincts.

"DISTRICT 59 -

"Rankin County - Fannin *, Flowood, Grant's Ferry, Holbrook, Northshore, Reservoir East, Reservoir West and West Pearl * Precincts.

"DISTRICT 60 -

"Rankin County - Antioch, Crossroads, East Brandon, Johns, Mayton, Monterey *, North Brandon, Park Place *, Shiloh, South Brandon and West Brandon Precincts.

"DISTRICT 61 -

"Rankin County - Crest Park, Cunningham Heights, Eldorado, North McLaurin, North Pearson, Park Place *, Patton Place, Pearl, South McLaurin, South Pearson *, Springhill and West Pearl * Precincts.

"DISTRICT 62 -

"Copiah County - Crystal Springs East * and Crystal Springs South * Precincts.

"Rankin County - Clear Branch, Cleary, East Steens Creek, Mountain Creek, North Richland *, South Richland, Star and West Steens Creek Precincts.

"Simpson County - Pearl * Precinct.

"DISTRICT 63 -

"Hinds County - Precincts 91 *, Bolton, Brownsville, Cayuga, Edwards, Learned *, Pinehaven *, Raymond 1, Raymond 2 *, Spring Ridge *, St. Thomas and Utica 1.

"Warren County - Moose Lodge * and Tingleville * Precincts.

"Yazoo County - Mechanicsburg and West Bentonia Precincts.

"DISTRICT 64 -

"Hinds County - Precincts 14 *, 32, 33, 34, 35, 36, 44, 45, 46 and 78.

"Madison County - Main Harbor Precinct.

"DISTRICT 65 -

"Hinds County- Precincts 14 *, 15, 17, 37, 38, 39, 40, 41, 42, 43, 79 and 80 *.

"DISTRICT 66 -

"Hinds County - Precincts 74, 75, 91 *, 92, 93, 94, 95, Byram 2 *, Chapel Hill, Dry Grove, Learned *, Raymond 2 *, Spring Ridge *, Terry * and Utica 2.

"DISTRICT 67 -

"Hinds County - Precincts 18, 20, 21, 22, 24, 25, 26, 31, 56 *, 60, 62 *, 85, 86, 87 and Clinton 6.

"DISTRICT 68 -

"Hinds County - Precincts 47, 51, 52, 53, 55, 56 *, 61, 62 *, 63, 88, 97, Old Byram and Terry *.

"Rankin County - North Richland *, South Pearson * and West Pearl * Precincts.

"DISTRICT 69 -

"Hinds County - Precincts 54, 57, 58, 59, 64, 66, 67, 68, 70, 89, 90, Jackson State, Raymond 2 * and Spring Ridge *.

"DISTRICT 70 -

"Hinds County - Precincts 1, 10, 11, 12, 13, 16, 19, 2, 23, 27, 28, 29, 30, 4, 5, 50, 6, 8, 84 and 9.

"DISTRICT 71 -

"Hinds County - Precincts 69, 71, 72, 73, 76, 77, 96, Byram 1 and Byram 2 *.

"DISTRICT 72 -

"Hinds County - Precincts 80 *, 81, 82, 83, Cynthia and Pocahontas.

"Madison County - Ridgeland 1, Ridgeland 3, Ridgeland 4 and Tougaloo Precincts.

"DISTRICT 73 -

"Madison County - Flora *, Gluckstadt *, Highland Colony Baptist Church, Lorman-Cavalier *, Ridgeland First Methodist Church, SunnyBrook, Whispering Lake * and Yandell Road Precincts.

"DISTRICT 74 -

"Rankin County - Castlewoods, Castlewoods West, East Crossgates, Liberty, Mullins, Northeast Brandon, Oakdale, Pelahatchie *, South Crossgates and West Crossgates Precincts.

"DISTRICT 75 -

"Rankin County - Fannin *, Leesburg, Pelahatchie * and Pisgah Precincts.

"Scott County - Cooperville, East-West Morton, Forkville, High Hill, Homewood, Liberty, North Forest, North Morton, Northeast Forest, Northwest Forest, Pulaski, South Forest and Springfield Precincts.

"DISTRICT 76 -

"Claiborne County - District 5B Precinct.

"Copiah County - Beauregard *, Carpenter, Centerpoint *,

"Crystal Springs East *, Crystal Springs North, Crystal Springs South *, Crystal Springs West, Dentville, Gallman, Hazlehurst East, Hazlehurst North, Hazlehurst South, Hazlehurst West and Martinsville Precincts.

"Hinds County - Terry * Precinct.

"DISTRICT 77 -

"Rankin County - Cato, Dry Creek, Monterey * and Puckett Precincts.

"Simpson County - Braxton, D'Lo, Harrisville, Jupiter, Jupiter A, Magee 1 *, Magee 2, Magee 4-N, Magee 4N A, Magee 4-S, Mendenhall 1, Mendenhall 3, Merit, Pearl *, Pinola, Shivers, Sumrall and Weathersby Precincts.

"DISTRICT 78 -

"Leake County - Good Hope and Lena Precincts.

"Newton County - Chapel Hill, Conehatta, Decatur 1, Decatur I-A *, Hazel, Lawrence, Little Rock, Prospect, Scanlan, Union 1, Union 2 and Union 3 Precincts.

"Scott County - Clifton, Contrell, Harperville, Hillsboro, House, Lake, Langs Mill, Ludlow, Salem, Sebastapol and Steele Precincts.

"DISTRICT 79 -

"Jasper County - Antioch, Bay Springs Beat 3, Bay Springs Beat 4, Holders Church, Louin, Montrose, Mossville 1st, Mossville 2nd, Palestine and Stringer * Precincts.

"Smith County - All.

"DISTRICT 80 -

"Clarke County - Beaver Dam, Langsdale, Oak Grove, Pachuta and Shubuta Precincts.

"Jasper County - Claiborne, Heidelberg, Paulding *, Philadelphia and Vossburg Precincts.

"Jones County - Cameron Center *, Cooks Avenue Community Center, Erata, Glade School *, Kingston Church, Lamar School *, Laurel Courthouse *, National Guard Armory, Nora Davis School, North Laurel *, Oak Park School, Old Health Department, Sandersville Civic Center, Shady Grove *, Sharon * and Stainton * Precincts.

"DISTRICT 81 -

"Clarke County - Energy and Snell Precincts.

"Lauderdale County - Precincts 16, 17, 18, Alamucha, Causeyville, Clarkdale, Culpepper, East Bonita, Meehan, Mt. Gilead, Odom, Pickard, Russell, Sageville, South Nellieburg, South Russell, Suqualena, Toomsuba, Valley, Vimville, Whynot and Zero.

"DISTRICT 82 -

"Lauderdale County - Precincts 10, 11, 12, 14, 15, 20, 3, 4, 6 *, 7, 8 and 9.

"DISTRICT 83 -

"Lauderdale County - Precincts 1, 13, 2, 5 *, Andrews Chapel *, Bailey, Center Hill, Collinsville, Martin, New Lauderdale, Obadiah, Prospect and West Lauderdale.

"DISTRICT 84 -

"Clarke County - Carmichael, DeSoto, East Quitman, Enterprise, Harmony Beat 1, Harmony Beat 2, Manassa, North Quitman, Pineridge, Rolling Creek, Souinlovie, South Quitman, Springs, Stonewall Beat 1, Stonewall Beat 3 and Union Precincts.

"Jasper County - Fellowship, Midway, Paulding *, Rose Hill and Waldrup Precincts.

"Newton County - Chunky, Decatur 1-A *, Duffee, Hickory, Liberty, Newton 1, Newton 4 and Newton 5 Precincts.

"DISTRICT 85 -

"Claiborne County - District lA, District 1B, District 1C, District 2, District 3A, District 3B, District 4A, District 4B, District 4C and District 5A Precincts.

"Franklin County - Antioch, Bude, Meadville, Pine Grove and Whittington Precincts.

"Jefferson County - Chancery Clerk, Circuit Clerk, City Hall, Ebenezer, Harriston, Highway 33, Lorman, McNair, Red Lick, Stampley and Union Church Precincts.

"Warren County - Goodrum, Moose Lodge * and Yokena Precincts.

"DISTRICT 86 -

"Greene County - State Line Precinct.

"Perry County - Holly Street and Richton City Hall Precincts.

"Wayne County - All.

"DISTRICT 87 -

"Forrest County - Carnes, Dantzler, Dixie * and Timberton * Precincts.

"Lamar County - Arnold Line, Lamar Park, Northeast Lamar, Oak Grove *, Okahola, Purvis *, Richburg, South Purvis * and Wesley Manor * Precincts.

"DISTRICT 88 -

"Jasper County - Stringer * Precinct.

"Jones County - Antioch, Blackwell, Bruce, Centerville, Currie, Gitano, Glade School *, Hebron, Johnson *, Landrum Community Center, Moselle, Myrick, Ovett, Powers Community Center, Rainey, Rustin, Sandhill, Shelton, Soso, Tuckers and Union Precincts.

"DISTRICT 89 -

"Jones County - Calhoun, Cameron Center *, County Barn, Ellisville Court House, Johnson *, Lamar School *, Laurel Courthouse *, Matthews, Mauldin Community Center, North Laurel *, Pendorf, Pinegrove, Pleasant Ridge, Roosevelt, Shady Grove *, Sharon *, South Jones and Stainton * Precincts.

"DISTRICT 90 -

"Covington County - Collins, Gilmer, Lone Star/Black Jack, Mitchell, Mt. Olive *, Okahay, Richmond, Rock Hill, Sanford, Seminary, South Collins, Station Creek, Strahan, West Collins, Williamsburg and Yawn Precincts.

"Jefferson Davis County - Bassfield Beat 3 *, Good Hope, Melba and Northeast Prentiss * Precincts.

"Simpson County - Bowie, Dry Creek, Magee 1 *, Magee 2 A, New Hope, Oak Grove * and Saratoga Precincts.

"DISTRICT 91 -

"Copiah County - Georgetown North and Georgetown South * Precincts.

"Covington County - Dry Creek and Mt. Olive * Precincts.

"Jefferson Davis County - Bassfield Beat 2, Bassfield Beat 3 *, Carson, Clem, Granby, Green's Creek, Gwinville, Hawthorn *, Hebron, Mt. Carmel, Northeast Prentiss *, Northwest Prentiss, Red House, Sons Academy, South Prentiss, South Prentiss (2806512), Whiting and Williamsons Mill Precincts.

"Lawrence County - Courthouse, East Arm, Grange, Hooker, Monticello, National Guard Armory, New Hebron, Nola *, North Silver Creek, Oma, Peyton Town, South Silver Creek, Stringer, Wanilla *, West Arm and West Monticello Precincts.

"Simpson County - Bridgeport, Fork Church, Oak Grove *, Oak Grove A, Oak Grove B and Shivers A Precincts.

"DISTRICT 92 -

"Copiah County - Beauregard *, Centerpoint *, Georgetown South *, Shady Grove, Strong Hope-Union and Wesson Precincts.

"Lawrence County - Nola *, Sontag and Wanilla * Precincts.

"Lincoln County - Big Springs, Caseyville, Halbert Heights, Heucks Retreat, Johnson Grove, Lipsey School, Little Bahala, Loyd Star, Montgomery, New Sight, Northwest Brookhaven, Old Brook, Old Red Star, Vaughn, West Lincoln and Zetus Precincts.

"DISTRICT 93 -

"Hancock County - Crane Creek, Flat Top, Hancock North Central, Leetown and Standard Precincts.

"Pearl River County - Picayune 4 East, Salem, Savannah, Steep Hollow and Sycamore * Precincts.

"Stone County - American Legion, Elarbee, Magnolia, McHenry Fire Station *, McHenry Library, Old Hospital, PerkinstoD and Project Road Precincts.

"DISTRICT 94 -

"Adams County - Airport, Bellemont *, Carpenter, Concord, Convention Center, Duncan Park *, Foster Mound, Maryland, Morgantown, Northside School, Oakland, Palestine *, Pine Ridge, Thompson and Washington Precincts.

"Franklin County - Hamburg and Roxie Precincts.

"Jefferson County - Cannonsburg, Church Hill, Fayette Manor and Old Hollywood Church Precincts.

"DISTRICT 95 -

"Hancock County - Dedeaux, Diamondhead East, Diamondhead West, Fenton and Kiln East Precincts.

"Harrison County - Precincts 201 *, 202, 210, 212 *, 306 and 315.

"DISTRICT 96 -

"Adams County - Beau Pre *, Bellemont * and By-Pass Firestation Precincts.

"Amite County - Amite River, Ariel, Berwick, Crosby, East Centreville, East Gloster, Gloster, Liberty, Riceville, ~outh Liberty, Street, Tickfaw and Walls Precincts.

"Pike County - Precincts 10 *, 12, 29 *, 30 * and 9 *.

"Wilkinson County - All.

"DISTRICT 97 -

"Adams County - Beau Pre *, Bellemont *, Courthouse, Duncan Park *, Kingston, Liberty Park and Palestine * Precincts.

"Amite County - East Fork, East Liberty, Homochitto, New Zion, Oneil, Smithdale, Tangipahoa and Zion Hill Precincts.

"Franklin County - Knoxville and Wesley Chapel Precincts.

"Pike County - Precincts 15, 17, 19 *, 21, 22, 23, 25, 26, 27, 29 * and 3.

"DISTRICT 98 -"

"Pike County - Precincts 1, 10 *, 11, 13, 16, 18, 19 *, 2, 24, 28, 29 *, 30 *, 31, 32, 4, 5, 6, 7, 8 and 9 *.

"Walthall County - Dinan and Hope Precincts.

"DISTRICT 99 -

"Lamar County - Baxterville, Greenville *, Pine Grove *, Purvis * and South Purvis * Precincts.

"Marion County - Balls Mill, Foxworth, Kokomo, Pine Burr, Pittman, Sandy Hook and Stoval Precincts.

"Walthall County - Darbun, Dexter, District 3 Tylertown, District 4 Tylertown, District 4 West, East Tylertown, Enon, Improve, Lexie, Mesa, Midway, North Kirklin, North Knoxo, Saint Paul, Sartinville, South Kirklin, South Knoxo, Varnell and West Tylertown Precincts.

"DISTRICT 100 -

"Lamar County - Greenville *, Pine Grove *, Purvis * and South Purvis * Precincts.

"Marion County - 5 South Columbia, Carley, Cedar Grove, City Hall, Courthouse, Darbun, East Columbia, Goss, Hub, Jefferson Middle School, Morgantown, Morris, National Guard, Popetown, Union and White Bluff Precincts.

"DISTRICT 101 -

"Lamar County - Bellevue, Breland, Lake Serene, Midway, Oak Grove *, Oloh, Rocky Branch and Sumrall Precincts.

"DISTRICT 102 -

"Forrest County - Blair High School *, Camp School, Dixie *, Highland Park, Pinecrest, Rawls Springs, Thames School, Timberton *, USM Golf Course, Westside * and Woodley School Precincts.

"Lamar County - Wesley Manor * Precinct.

"DISTRICT 103 -

"Forrest County - Blair High School *, Davis School, Dixie Pine-Central *, Eaton School, Eatonville, Glendale *, Jones School, Lillie Burney School, North Heights, Rowan School, Salvation Army, Walthall School and Westside * Precincts.

"DISTRICT 104 -

"Forrest County - Barrontown-Macedonia, Brooklyn, Dixie *, Dixie Pine-Central *, East Petal, Glendale *, Leeville, Maxie, McLaurin, Petal Masonic Lodge, Sunrise and West Petal Precincts.

“DISTRICT 105 -

“George County - Rocky Creek Precinct.

“Greene County - Jonathan, Jones, Leaf, Leakesville, Maples, McLain, Mutual Rights, North Leakesville, Piave, Vernal, Wade, Washington and Washington A Precincts.

“Perry County - Arlington, Beaumont City Hall, Beaumont Library, Deep Creek, Hintonville, Indian Springs, Janice, New Augusta Courthouse, New Augusta Elementary, Prospect, Richton Multi-Purpose, Runnelstown and Thompson Hill Precincts.

“DISTRICT 106 -

“Lamar County - Lumberton and Yawn Precincts.

“Pearl River County - Buck Branch, Byrd Line, Carriere *, Derby, Ford’s Creek, Gum Pond, Hickory Grove, McNeill 3, McNeill 5, Mill Creek, Oak Hill, Ozona, Picayune 1 East *, Picayune 2 *, Poplarville 1, Poplarville 2, Poplarville 3, Progress, Whitesand 1 and Whitesand 2 Precincts.

“DISTRICT 107 -

“George County - Barton, Basin School, Benndale Crossing, Bexley School, Broom School, Central School, Courthouse, Davis School, Lucedale City Hall, Lucedale High School, Multi-Mart, Multipurpose Building, Salem School, Shady Grove, Twin Creek and Ward Precincts.

“Stone County - Big Level, Bond, Courthouse (28131102), Flint Creek, McHenry Fire Station *, Pleasant Hill, Ten Mile and Tuxachanie Precincts.

“DISTRICT 108 -

“Pearl River County - Anchor Lake/West Union, Caesar,

“Carriere *, Henleyfield, Hide-A-Way North Hills, Nicholson, Picayune 1 East *, Picayune 1 South, Picayune 2 *, Picayune 4 West, Picayune 5, Pine Grove and Sycamore * Precincts.

“DISTRICT 109 -

“George County - Agricola, Howell School, Movella, Pine Level, and Shipman Precincts.

“Jackson County - Big Point, East Central, Escatawpa A, Escatawpa B, North Vancleave, North Vancleave A, South Vancleave A and Wade A Precincts.

“DISTRICT 110 -

“Jackson County - Arlington, Chico, Chico A, Eastside, Fair, Fair A, Fair B, Girl Scout, Girl Scout A, Griffin Heights, Jefferson Street, Presbyterian B, Recreation Center, Recreation Center A, Sue Ellen, Union Hall and YMBC/Dantzler Precincts.

“DISTRICT 111 -

“Jackson County - American Legion, Arlington A, Eastlawn, Escatawpa, Fountainbleau *, Gautier B *, Helena, Nazarene, North Pascagoula, Orange Grove, Orange Grove A, Pinecrest, Pinecrest A, Presbyterian, Presbyterian A and Sacred Heart Precincts.

“DISTRICT 112 -

“Jackson County - Fountainbleau *, Gautier, Gautier A, Gautier B *, Gautier C, Gulf Hills B, Hickory Hill, Hickory Hills A, Ocean Springs Civic Center * and South Vancleave Precincts.

“DISTRICT 113 -

“Jackson County - Gulf Hills A, Gulf Park Estates, Gulf Park Estates A, Ocean Springs Armory, Ocean Springs Civic Center * and Ocean Springs Civic Center A Precincts.

“DISTRICT 114 -

“Harrison County - Precinct 112 *.

“Jackson County - Carterville, Gulf Hills, Highway 57, Highway 57 A, Larue, Latimer, Ocean Springs Community Center, Red Hill, Red Hill A, St. Martin and Villia Maria Precincts.

“DISTRICT 115 -

Harrison County - Precincts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110 *, 111 *, 114, 502 * and 509 *.

“Jackson County - Carterville, Gulf Hills, Highway 57, Highway 57 A, Larue, Latimer, Ocean Springs Community Center, Red Hill, Red Hill A, St. Martin and Villia

Maria Precincts.

"DISTRICT 116 -

"Harrison County - Precincts 111 *, 112 *, 113, 201 *, 212 *, 213 *, 501, 506, 507, 508 and 509 *.

"DISTRICT 117 -

"Harrison County - Precincts 110 *, 207 *, 215 *, 406 *, 502 *, 503, 504 *, 505 *, 509 * and 510.

"DISTRICT 118 -

Harrison County - Precincts 203, 207 *, 208, 209, 213 *, 214, 215 *, 406 *, 409 *, 504 * and 505 *.

"DISTRICT 119 -

"Harrison County - Precincts 207 *, 401 *, 402, 403, 404 *, 405, 407, 408, 409 *, 410 * 411, and 412.

"DISTRICT 120 -

"Harrison County - Precincts 205, 206, 302, 303, 307, 308, 309, 310, 311, 312, 313, 401 * and 404 *.

"DISTRICT 121 -

"Harrison County - Precincts 204, 211, 301, 304, 305, 314, and 410 *.

"DISTRICT 122 -

"Hancock County - Ansley, Arlington, Bayou Phillip, Catahoula, City Hall, Clermont Harbor, Courthouse, Edwardsville, Kiln West, Lakeshore, North Bay East, North Bay West, Pearlington, South Bay, Waveland East, Waveland West and West Shoreline Park Precincts.

"BE IT FURTHER RESOLVED, That the Mississippi House of Representatives reapportionment map draft, hereinafter referred to as 'the map,' prepared by the staff of the Standing Joint Legislative Committee on Reapportionment, having been duly examined and approved by resolution duly adopted by the Standing Joint Legislative Committee on Reapportionment, is hereby incorporated.

"BE IT FURTHER RESOLVED, That 'the map' that is developed in conjunction with the redistricting plan adopted by the Legislature during the 2012 Regular Session shall control the resolution of any dispute, if there is a conflict between the language found in the description of any district and 'the map.'

"BE IT FURTHER RESOLVED, That the Chairman and Vice Chairman of the Standing Joint Legislative Committee on Reapportionment shall file with the Secretary of State of Mississippi the Split Precinct Block List developed in conjunction with the plan that details the portions of the partial or split precincts that are contained within a district by census tract and block number, and such document duly filed with the Secretary of State is hereby incorporated into and shall be construed to be an integral part of this joint resolution. Such partial or split precincts contained in this resolution shall be identifiable by an asterisk (*) which shall follow its designation within any electoral district.

"BE IT FURTHER RESOLVED, That the map shall be permanently stored in the Office of the Secretary of State, that one (1) copy of the computer dataset for the map shall be filed with the Clerk of the Mississippi House of Representatives and one (1) copy of such tape shall be stored by the Mississippi Department of Archives and History. The Secretary of State and the Mississippi Department of Archives and History are hereby directed to preserve a copy of the map with the boundaries of the counties' precincts, as they appear in the Census Bureau's 2010 TIGER Line Shape files released in November 2010, and shall also preserve census tract or block numbers utilized in splitting any House of Representatives electoral districts contained in the map. All raw data utilized in generating any plans in formulating the reapportionment and redistricting of the Mississippi House of Representatives in accordance with the map shall also be preserved by the Secretary of State and the Department of Archives and History.

"BE IT FURTHER RESOLVED, That the boundaries of the House of Representatives districts described above shall be:

"(a) The boundaries of the counties as they appear in the Census Bureau's 2010

TIGER Line Shape files released in November 2010;

"(b) The boundaries of the precincts as such precinct boundaries are contained in the Census Bureau's 2010 TIGER Line Shape files released in November 2010; and

"(c) The boundaries of the census tracts or blocks as such census tracts or blocks are contained in the Census Bureau's 2010 TIGER Line Shape files released in November 2010.

"BE IT FURTHER RESOLVED, That the Standing Joint Legislative Committee on Reapportionment is directed to provide all information necessary to assist the counties in identifying the boundaries of the districts described in this resolution.

"BE IT FURTHER RESOLVED, That this resolution shall be liberally construed to effectuate the purposes hereof and to redistrict the House of Representatives of this state in compliance with constitutional requirements.

"It is intended that this resolution and the districts described herein completely encompass all the area within the state. It is also intended that such districts contain all the inhabitants in this state. It is further intended that the redistricting provided for in this resolution result in the creation of districts which are substantially equal in population. It is also intended that no district shall include any of the area included within the description of any other district.

"BE IT FURTHER RESOLVED, That the redistricting of House of Representatives districts and Senate districts shall be deemed to be separate from each other. The invalidity of the districts of one (1) house shall not affect or require the redistricting of the other house.

"BE IT FURTHER RESOLVED, That if the districts described in this resolution do not carry out the purposes hereof because of: unintentional omissions; duplication; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards or other divisions thereof, or of their boundary lines; then the Secretary of State, at the request of the Standing Joint Legislative Committee on Reapportionment shall, by order, correct such omissions, overlaps, erroneous nomenclature or other defects in the description of districts so as to accomplish the purposes and objectives of this resolution.

"BE IT FURTHER RESOLVED, That copies of such orders shall be filed by the Secretary of State in his own office and in the offices of the affected commissioners of election and registrars. The Secretary of State may adopt reasonable rules regulating the procedure for applications for orders under this resolution in the manner of serving and filing any notice or copy of orders relating thereto. Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this resolution.

"BE IT FURTHER RESOLVED, That the redistricting contained in this resolution shall supersede any prior redistricting, and any prior redistricting shall be null and void upon the date this resolution is effectuated pursuant to the provisions of Section 5 of the Voting Rights Act of 1965, as amended and extended, or pursuant to a final decision by any court of competent jurisdiction, whichever first occurs.

"BE IT FURTHER RESOLVED, That the Joint Legislative Committee on Compilation, Revision and Publication of Legislation is hereby directed to see to it that this resolution is placed in the editor's notes that follow Section 5-1-1, Mississippi Code of 1972.

"BE IT FURTHER RESOLVED, That if any paragraph, sentence, clause, phrase or any part of this resolution is declared to be unconstitutional or void or if for any reason is declared to be invalid or of no effect, the remaining paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

"BE IT FURTHER RESOLVED, That the Chairman of the House of Representatives Apportionment and Elections Committee, with the assistance of counsel employed by the Standing Joint Legislative Committee on Reapportionment, is hereby directed to submit this resolution, immediately upon its adoption by both houses of the Legislature, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"BE IT FURTHER RESOLVED, That the foregoing provisions of this resolution shall take effect and be in force from and after the date it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Cross References — Constitutional provision for legislative power, see Miss. Const. Art. 4, § 33.

Constitutional provision for terms of members of House of Representatives, see Miss. Const. Art. 4, § 34.

Constitutional provision for apportionment of the House of Representatives and the Senate, see Miss. Const. Art. 13, § 254.

Standing joint legislative committee on reapportionment, see § 5-3-91 et seq.

Provision that Senators in the Legislature shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see § 23-15-291 et seq.

Provisions for filling vacancies in either house of the Legislature, see § 23-15-851.

Contests of the election of a member of the Legislature, see §§ 23-15-955 and 23-15-957.

JUDICIAL DECISIONS

1. In general.

To accomplish goal of interfering with state policy only to that extent necessary to remedy statutory or constitutional violations, court would adhere to Mississippi's established procedure for holding legislative elections, including party primaries, rather than using format for special elections and elections would proceed for 3-year, term of office to supplement interim elections filed in year that regular elections were required to be held under Mississippi statute. Watkins v. Fordice, 791 F. Supp. 646, 1992 U.S. Dist. LEXIS 7140 (S.D. Miss. 1992).

Use of 1982 reapportionment plan, which had been found unconstitutional, rather than court-drawn plan or plan proposed by parties, was constitutional and could properly be used on interim basis in order that primary and general elections for state legislature could take place as scheduled prior to implementation of valid, permanent plan, despite fact that 1982 plan did not maximize members of majority black districts; because of swiftness with which population changes, and high cost of creating new election districts, and in view of lack of sufficient time to conduct full hearings and fact that proponents of one proposed plan failed to show that plan cured objections by United States Attorney General, and since possibility of corrective relief at later date existed, use was appropriate. Watkins v. Mabus, 771 F. Supp. 789, 1991 U.S. Dist. LEXIS 12646 (S.D. Miss.), aff'd in part, vacated in part, 502 U.S. 954, 112 S. Ct. 412, 116 L. Ed. 2d 433, 1991 U.S. LEXIS 6598 (U.S. 1991). But see Watkins v. Mabus, 502 U.S. 954, 112 S. Ct. 412, 116 L. Ed. 2d 433, 1991 U.S. LEXIS 6598 (U.S. 1991).

House Bill No. 1290 and Senate Bill No. 2976, Mississippi Laws, 1975, Regular Session, reapportioning the state legislature, are not now and will not be effective as laws until and unless cleared pursuant to § 5 of the Voting Rights Act of 1965, 42 USCS § 1973c. Connor v. Waller, 421 U.S. 656, 95 S. Ct. 2003, 44 L. Ed. 2d 486, 1975 U.S. LEXIS 68 (U.S. 1975).

Mississippi statutes reapportioning the state legislature are legislative enactments that are required to be submitted for federal approval pursuant to § 5 of the Voting Rights Act of 1965 (42 USCS § 1973c), and such state statutes are not effective until and unless cleared pursuant to § 5; thus a United States District Court, after improperly concluding that § 5 is not applicable, also errs in deciding constitutional challenges to the state statute based upon claims of racial discrimination. Connor v. Waller, 421 U.S. 656, 95 S. Ct. 2003, 44 L. Ed. 2d 486, 1975 U.S. LEXIS 68 (U.S. 1975).

To establish a denial of equal protection by a state legislature's multimember districting plan, it must be shown that the plan will operate to minimize or cancel out the voting strength of racial or political elements of the voting population; there must be more evidence than a simple disproportionality between the voting potential and the legislative seats won by a racial or political group; there must be evidence that the group has been denied access to the political process equal to the access of other groups, and proof of lessening or cancellation of voting strength must be offered. Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766, 1975 U.S. LEXIS 25 (U.S. 1975).

Unless there are persuasive justifications, a federal court's reapportionment plan for a state's legislature must avoid use of multimember districts, and must ordinarily achieve the goal of population equality with little more than de minimis variation, although such plan is not required to attain the mathematical preciseness required for congressional redistricting; where important and significant state considerations rationally mandate departure from such standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted. Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766, 1975 U.S. LEXIS 25 (U.S. 1975).

All of the provisions of §§ 254 and 255 of the Mississippi Constitution of 1890, as amended, and as they existed prior to amendment, and Code 1942, §§ 3326 and 3327, as amended, and as those sections read on July 22, 1966, are unconstitutional and invalid for all future elections of members of the House of Representatives and the Senate of the Mississippi Legislature, under the decision in Baker v. Carr (1962) 369 US 186, 7 L. Ed. 2d 663, 82 S. Ct. 691, which enunciated the "one person-one vote" rule and required legislative reapportionment where it was necessary to secure compliance with the rule. Connor v. Johnson, 256 F. Supp. 962, 1966 U.S. Dist. LEXIS 6577 (S.D. Miss. 1966).

RESEARCH REFERENCES

ALR.

Application of constitutional "compactness requirement" to redistricting. 114 A.L.R.5th 311.

State court jurisdiction over congressional redistricting disputes. 114 A.L.R.5th 387.

Diluting effect of minorities' votes by adoption of particular election plan, or gerrymandering of election districts, as violation of equal protection clause of Federal Constitution. 27 A.L.R. Fed. 29.

Am. Jur.

25 Am. Jur. 2d, Elections §§ 8, 37, 22 et seq.

CJS.

81A C.J.S., States §§ 216 et seq.

Lawyers' Edition.

Constitutionality of state legislative apportionment – Supreme Court cases. 77 L. Ed. 2d 1496.

§ 5-1-2. Nomination and election of representatives by posts in districts having more than one representative.

To minimize confusion in the electoral process, in all districts for the election of more than one (1) representative, each representative shall be nominated and elected by posts in order that the voter may have a clear-cut choice for each seat to be chosen from a specific group of candidates (Chapman v. Meier, Supreme Court decision).

HISTORY: Laws, 1975, ch. 510, § 2, eff from and after passage (approved April 8, 1975).

§ 5-1-3. Apportionment of senators.

The number of Senators shall be fifty-two (52) and shall be elected from fifty-two (52) districts adopted as provided in Section 254 of the Mississippi Constitution of 1890.

HISTORY: Codes, 1930, § 5330; 1942 §§ 3327, 3327.1; Laws, 1963, 1st Ex Sess. ch. 34, § 1; Laws, 1966 Ex Sess, ch. 41, § 1; Laws, 1971, ch. 394 § 2; Laws, 1973, ch. 305, § 1; Laws, 1973, ch. 457, § 1; Laws, 1975, ch. 484, § 1; Laws, 1977, 2d Ex Sess, ch. 26, § 1; Laws, 1978, ch. 535, § 1; Laws, 1982, ch. 305, § 1; Laws, 2002, ch. 568 , § 2, eff from and after July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Chapter 2234, Laws of 2012 (JR 201), adopted by the Senate on May 2, 2012, and by the House of Representatives on May 3, 2012, and effective from and after September 14, 2012 (the date the United States Attorney General interposed no objection to the Joint Resolution), as amended by Chapter 2206, Laws of 2019 (JR 202), adopted by the Senate on March 26, 2019, and by the House of Representatives on March 27, 2019, effective upon passage, and contingently repealed if appellants prevail in the appeal of *Joseph Thomas, et al. v. Phil Bryant, et al.* (see last paragraph) provides as follows:

"WHEREAS, the United States District Court for the Southern District of Mississippi ruled that Mississippi State Senate District 22 as currently configured diluted the voting strength of African-Americans and entered a final judgment to this effect; and

"WHEREAS, in the case of *Joseph Thomas, et al. v. Phil Bryant, et al.,* No. 19-60133 (5th Cir. Mar. 15, 2019), a panel of the United States Court of Appeals for the Fifth Circuit ruled on the defendant's motion for a stay and the motion for a stay was granted in part and denied in part; and

"WHEREAS, a majority of the panel concluded that the Legislature should be afforded an opportunity to fix the vote dilution found by the district court; and

"WHEREAS, a stay was entered for that purpose until April 3, 2019, and the candidate deadline for any districts whose lines are redrawn was extended to April 12, 2019:

"NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, that Chapter 2234, Laws of 2012, is amended as follows:

"BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the number of Senators shall be fifty-two (52) and shall be elected from fifty-two (52) districts, composed as follows:

"DISTRICT 1

"DeSoto County: *Aldens, Alphaba Cockrum, Bridgetown, DeSoto Central, Endora, Hernando Central, Hernando East, Hernando West, *Horn Lake South, Lake Cormorant, Lewisburg East, Lewisburg West, Love, Nesbit East, Nesbit West, Oak Grove and Walls Precincts.

"DISTRICT 2

"DeSoto County: *Aldens, Cherry Valley, Elmore, Greenbrook North, Greenbrook South, Horn Lake Central, Horn Lake East, Horn Lake Intermediate School, Horn Lake North, *Horn Lake South, Horn Lake West, Plum Point, Southhaven North, Southhaven South and Southhaven West Precincts.

"DISTRICT 3

"Benton County: All.

"Pontotoc County: Bankhead, Bethel, Buchanan, Cherry Creek, Ecru, Friendship, Hoyle, Hurricane, Longview, Oak Hill, Pontotoc 1, Pontotoc 2, Pontotoc 3, Pontotoc 4, Pontotoc 5, Sherman, Turnpike, Woodland and Zion Precincts.

"Union County: All.

"DISTRICT 4

"Alcorn County: All.

"Tippah County: All.

"DISTRICT 5

"Itawamba County: Armory, Bounds, Clay, Copeland, Friendship, Fulton District 1 Courthouse, Fulton District 4 American Legion, Fulton District 5 Firestation, Mantachie, Mt. Gilead, Ozark, Pineville, Pleasanton, Ryan and Tilden Precincts.

"Prentiss County: All.

"Tishomingo County: All.

"DISTRICT 6

"Itawamba County: Ratliff Precincts. Centerville, Fawn Grove, Kirkville and Ratliff Precincts.

"Lee County: Auburn, Baldwin, Beech Springs, Belden, Birmingham Ridge, Bissell, Blair, Corrona, Davis Box, East Heights, Eggville, Euclautubba, Fellowship, Flowerdale, Friendship, Gilvo 1, Gilvo 5, Guntown, Hebron, Mooreville 1, Mooreville 5, Oak Hill, *Palmetto A & B, Pratts, Richmond, Saltillo, Tupelo 1, *Tupelo 2, *Tupelo 3, *Tupelo 4 North, Tupelo 5 and Unity Precincts.

"DISTRICT 7

"Itawamba County: Bigbee Fork, Cardsville, Carolina, Dorsey, Evergreen, Greenwood, Hampton, James Creek, New Salem, Oakland, Tremont, Turon and Wigginton Precincts.

"Lee County: Brewer, Kedron, Nettleton, *Palmetto A & B, Petersburg, Plantersville, *Tupelo 2, *Tupelo 3, *Tupelo 4 North, Tupelo 4 South and Verona Precincts.

"Monroe County: Aberdeen 3, Amory 1, Amory 2, Amory 5, Becker, Bigbee 1, Boyds, Central Grove, Darracott, Gibson, Hatley, Nettleton, North Aberdeen 4, Parham, Prairie, Smithville, South Aberdeen 4, Williams, willis and Wren Precincts.

"DISTRICT 8

"Calhoun County: All.

"Chickasaw County: All.

"Lee County: Old Union, *Palmetto A & B, Pleasant Grove and Shannon Precincts.

"Pontotoc County: Algoma/Beckham/ Judah/ North Randolph/Robbs/South Randolph/ Springville/Thaxton/Toccopola and Troy Precincts.

"Yalobusha County: Coffeeville 4, One North, One South, Three North West and Two Water Valley Precincts.

"DISTRICT 9

"Lafayette County: All.

"Panola County: Batesville 3 Cold Springs Coles Point/ East Batesville A, East Batesville 5, East Sardis, North Batesville A, North Springport and Pleasant Mount Precincts.

"DISTRICT 10

"Marshall County: Bethlehem, Chulahoma, Cornersville, Early Grove, Hudsonville, Laws Hill, Marianna, Mt. Pleasant, North Holly Springs District 1, North Holly Springs District 2, Potts Camp, Redbanks, Slayden, South Holly Springs, Wall Hill, Warsaw, Waterford, Watson and West Holly Springs Precincts.

"Tate County: All.

"DISTRICT 11

"Coahoma County: Clarksdale 1-4, Clarksdale 2-4, Clarksdale 3-3, Clarksdale 3-4, Clarksdale 4-2, Clarksdale 4-3, Clarksdale 5-4, Jonestown and Lyons Precincts.

"Panola County: Como, Courtland, Crenshaw, Curtis, Enon, Longtown, Macedonia-Concord, North Batesville B, Pleasant Grove, South Sardis, Tocowa and West Sardis Precincts.

"Quitman County: All.

"Tunica County: All.

"DISTRICT 12

"Bolivar County: Benoit/ Beulah/ Duncan/Alligator/ East Rosedale/ Gunnison/ Pace/ Scott/ Stringtown and West Rosedale Precincts.

"Coahoma County: Bobo/ Cagle Crossing/ Coahoma/ Dublin/ Farrell/ Friar's Point/ Lula/ Rena Lara/ Roundaway and Sherard Precincts.

"Washington County: American Legion, Brent Center, Buster Brown Community Center, Christ Wesleyan Methodist Church, Elks Club, Extension Building, Grace Methodist Church, Greenville Industrial College, Leland Rotary Club, Metcalfe City Hall, Potter House Church, St. James Episcopal Church, Swiftwater Baptist Church, Tampa Drive and Wards Recreation Center Precincts.

"DISTRICT 13

"Bolivar County: Boyle, Choctaw, Cleveland Courthouse, Cleveland Eastgate, East Central Cleveland, East Cleveland, Longshot, Merigold, Mound Bayou, North Cleveland, Northwest Cleveland, Renova, Shaw, Shelby, Skene, South Cleveland, West Central Cleveland, West Cleveland and Winstonville Precincts.

"Sunflower County: Boyer-Linn, Doddsville, Drew, Fairview-Hale, Indianola 3 North, Indianola 3 Northeast, Indianola 3 South, Indianola Southeast, Moorhead, Rome, Ruleville, Ruleville North, Sunflower 3, Sunflower 4 and Sunflower Plantation Precincts.

"Tallahatchie County: Brazil, Charleston Beat 2, Sumner Beat 2, Sumner Beat 5, Tutwiler, Webb Beat 2 and Webb Beat 5 Precincts.

"DISTRICT 14

"Attala County: Berea, Carmack, Ethel, Hesterville, Liberty Chapel, McCool, Providence, Thompson, Williamsville and Zama Precincts.

"Carroll County: All.

"Grenada County: Elliott, Futheyville, Geeslin, Gore Springs, Grenada Box 1, Hardy, Mt. Nebo, Pleasant Grove, Providence and Tie Plant Precincts.

"Leflore County: Money and *North Greenwood Precincts.

"Montgomery County: Alva, Duck Hill, Mt. Pisgah, North Duck Hill, North Mt. Pisgah - Sweethome, North Winona, South Winona, Southeast Winona and West Winona Precincts.

"Panola County: Eureka, Pope and South Springport Precincts.

"Tallahatchie County: Cascilla, Charleston Beat 1, Charleston Beat 3, Enid, Leverette, Murphreesboro, Paynes, Rosebloom, Springhill and Teasdale Precincts.

"Yalobusha County: Coffeeville 5, Oakland, Scobey, Skuna-Vanns, Sylva Rena and Tillatoba Precincts.

"DISTRICT 15

"Choctaw County: All.

"Montgomery County: East Winona, Kilmichael, Lodi, Nations, North Kilmicheal, Poplar Creek and Stewart Precincts.

"Oktibbeha County: Bradley, Central Starkville, Craig Springs, Double Springs, East Starkville, *Gillespie Street Center, Maben, North Longview, Northeast Starkville, Self Creek, South Adaton, South Longview, South Starkville, Sturgis and West Starkville Precincts.

"Webster County: All.

"DISTRICT 16

"Clay County: All.

"Lowndes County: Coleman A, Coleman B, Fairgrounds A, Fairgrounds D, Hunt A, Hunt B, Mitchell A, Mitchell B, Plum Grove C, Propst Park Community Hut, Union Academy A and *West Lowndes B Precincts.

"Noxubee County: Brooksville, Central District 3, Cliftonville, Noxubee County Vo-Tech Center and Prairie Point Precincts.

"Oktibbeha County: Bell Schoolhouse, Center Grove, *Gillespie Street Center, Hickory Grove, North Adaton, North Starkville 2, North Starkville 3, Oktoc, Osborn, Sessums and Southeast Oktibehha Precincts.

"DISTRICT 17

"Lowndes County: Air Base A, Air Base B, Air Base C, Air Base D, Air Base E, Artesia, Brandon A, Brandon B, Brandon C, Brandon D, Caledonia, Columbus High School A, Columbus High School B, Columbus High School C, Columbus High School D, Crawford A, Dowdle Gas Training Center B, Fairgrounds F, Fairgrounds G, Fairgrounds B, Fairgrounds C, Fairgrounds E, Hunt C, Lee Middle School, New Hope A, New Hope B, New Hope C, New Hope D, New Hope E, New Hope F, Plum Grove A, Plum Grove B, Rural Hill A, Rural Hill B, Rural Hill C, Sale A, Sale B, Sale C, Steens A, Steens B, Steens C, Trinity A, Trinity B, Union Academy B, Union Academy C, University A, University B, West Lowndes A and *West Lowndes B Precincts.

"Monroe County: Athens, Bartahatchie, Greenwood Springs, Hamilton and Lackey Precinct.

"DISTRICT 18

"Leake County: East Carthage, Ebenezer, Edinburg, Freeny, Madden, North Carthage, Renfroe, Salem, Singleton, South Carthage, Sunrise and Walnut Grove Precincts.

"Neshoba County: All.

"Winston County: East Winston, *Lovorn Tractor, Mars Hill, Nanih Waiya, New National Guard Armory, Noxapater, Shilioh, *Wathall and Zion Ridge Precincts.

"DISTRICT 19

"DeSoto County: Fairhaven, Hack's Cross, Ingram's Mill, Miller, Mineral Wells, Olive Branch North, Olive Branch South, Olive Branch West, Pleasant Hill North and Pleasant Hill South Precincts.

"Marshall County: Barton, Byhalia, Cayce, North Cayce and Victoria Precincts.

"DISTRICT 20

"Rankin County: Castlewoods, Castlewoods West, Crossroads, East Crossgates, Fannin, Flowood, Grant's Ferry, Holbrook, Leesburg, Mullins, Northeast Brandon, Northshore, Oakdale, Pelahatchie, Pisgah, Reservoir East, Reservoir West, South Crossgates and West Crossgates Precincts.

"DISTRICT 21

"Attala County: Aponaug, East, McAdams, Newport, North Central, Northeast, Northwest, Possumneck, Sallis, South Central and Southwest Precincts.

"Holmes County: Beat 4 Walden Chapel, Coxburg, Durant, Ebenezer, Goodman, Pickens and West Precincts.

"Leake County: Conway, Good Hope, Lena, Ofahoma , Thomastown, West Carthage and Wiggins Precincts.

"Madison County: *Bear Creek, Bible Church, Camden, Cameron, Canton Precinct I, Canton Precinct 2, Canton Precinct 3, Canton Precinct 4, Canton Precinct 5, Canton Precinct 7, Cedar Grove, Couparle, Liberty, Luther Branson School, Madison County Baptist Family Life Center, New Industrial Park, Ratliff Ferry and Sharon Precincts.

"Yazoo County: Deasonville, East Midway, Harttown and West Midway Precincts.

"DISTRICT 22

"Humphreys County: Gooden Lake, Isola, Lake City, Louise, Midnight, Putnam, Silver City, Southeast Belzoni and Southwest Belzoni Precincts.

"Madison County: *Bear Creek, Flora, *Gluckstadt, Magnolia Heights, Smith School, Virlilia and Yandell Road Precincts.

"Sharkey County: All.

"Sunflower County: Indianola 2 East, Indianola 2 West and Inverness Precincts.

"Washington County: Arcola City Hall, Darlove Baptist Church, Glen Allan Health Clinic, Hollandale City Hall and Leland Health Department Clinic Precincts.

"Yazoo County: 3-1 West, 3-2 East, 3-3 Jonestown, 3-4 South, Benton, Carter, Eden, Fairview, Free Run, Fugates, Holly Bluff, Lake City, Valley, Ward 4, Ward 5 and Zion Precincts.

"DISTRICT 23

"Issaquena County: All.

"Warren County: All.

"Yazoo County: Center Ridge, District 4 Ward 2, Dover, East Bentonia, Mechanicsburg, Robinette, Satartia, Tinsley, Ward 2 and West Bentonia Precincts.

"DISTRICT 24

"Grenada County: Grenada Box 2, Grenada Box 3, Grenada Box 4, Grenada Box 5, Holcomb and Sweethome Precincts.

"Holmes County: Acona, Cruger, Lexington Beat 1, Lexington Beat 4, Lexington Beat 5, Lexington East, Sandhill, Tchula and Thornton Precincts.

"Humphreys County: Central Belzoni, Four Mile, North Belzoni and Northwest Belzoni Precincts.

"Leflore County: Central Greenwood, East Greenwood, Minter City, Morgan City/Swiftown, MVSU, *North Greenwood, North Itta Bena, Northeast Greenwood, Rising Sun, Schlater, Sidon, South Greenwood, South Itta Bena, Southeast Greenwood, Southwest Greenwood and West Greenwood Precincts.

"Tallahatchie County: Blue Cane, Glendora, Philipp, Tippo and Webb Beat 4 Precincts.

"DISTRICT 25

"Hinds County: 32, 33, 34, 35, 36, 44, 45 and 78 Precincts.

"Madison County: *Bear Creek, Cobblestone, *Gluckstadt, Highland Colony Baptist Church, Madison 1, Madison 2, Madison 3, Main Harbor, NorthBay, Ridgeland Tennis Center, SunnyBrook, Trace Harbor, Victory Baptist Church and Whispering Lake Precincts.

"DISTRICT 26

"Hinds County: 41, 43, 46, 79, 80, 81, 82, 83, 84, 85, Bolton, Brownsville, Cynthia, Edwards, *Pinehaven, Pocahontas and Tinnin Precincts.

"Madison County: Lorman-Cavalier, Ridgeland 1, Ridgeland 3, Ridgeland 4, Ridgeland First Methodist Church and Tougaloo Precincts.

"DISTRICT 27

"Hinds County: 11, 12, 13, 16, 21, 22, 23, 24, *26, 27, 28, 29, 30, 31, 38, 39, 40, 42, 54, 55, *56, 57, 60, 61, 62, 86, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Clinton 5 and *pinehaven Precincts.

"DISTRICT 28

"Hinds County: 18, 19, 20, 25, *26, 50, 51, 52, 53, *56, 58, 59, 63, 64, 66, 67, 68, 69, 70, 71, 73, 74, 75, 76, 87, 88, 89, 90, 92, 93, Clinton 6 and Jackson State Precincts.

"DISTRICT 29

"Hinds County: 1, 10, 14, 15, 17, 2, 37, 4, 47, 5, 6, 72, 77, 8, 9, 91, 94, 95, 96, 97, Byram 1, *Byram 2, Old Byram, Spring Ridge and Terry Precincts.

"DISTRICT 30

"Rankin County: Crest Park, Cunningham Heights, East Brandon, Eldorado, Liberty, *Monterey, North Brandon, North McLaurin, North Pearson, North Richland, Park Place, Patton Place, Pearl, South Brandon, South McLaurin, South Pearson, *South Richland, Springhill, West Brandon and West Pearl Precincts.

"DISTRICT 31

"Lauderdale County: Center Hill, Collinsville, Martin, Obadiah and West Lauderdale Precincts.

"Newton County: All.

"Scott County: All.

"DISTRICT 32

"Kemper County: All.

"Lauderdale County: 10, 11, 12, 14, 15, 20, 3, 4, 5, 6, 7, 8, 9, Center Ridge, Daleville, East Lauderdale, East Marion, Marion and West Dalewood Precincts.

"Noxubee County: Earl Nash Gym, Mashulaville, Savannah, Shuqualak and Sommerville Precincts.

"Winston County: American Legion, County Agent, Fairground, *Lovorn Tractor, Mill Creek and *Walthall Precincts.

"DISTRICT 33

"Clarke County: All.

"Lauderdale County: 1, 13, 16, 17, 18, 2, Alamucha, Andrews Chapel, Bailey, Causeyville, Clarkdale, Culpepper, East Bonita, Kewanee, Meehan, Mt. Gilead, New Lauderdale, adorn, Pickard,

"Prospect, Russell, Sageville, South Nellieburg, South Russell, Suqualena, Toomsuba, Valley, Vimville, Whynot and Zero Precincts.

"DISTRICT 34

"Forrest County: Davis School, Eaton School, Eatonville, Glendale, Jones School, Lillie Burney School, North Heights, Rowan School, Salvation Army, Walthall School and *Westside Precincts.

"Jasper County: All.

"Jones County: Blackwell, Bruce, Centerville, Cooks Avenue Community Center, Gitano, Hebron, Kingston Church, Lamar School, Laurel Courthouse, *Mauldin Community Center, National Guard Armory, *Nora Davis School, *North Laurel, Oak Park School, Old Health Department, *Pendorf, Rainey, Sandhill, Shelton, Soso and *Stainton Precincts.

"DISTRICT 35

"Copiah County: *Crystal Springs East Precinct.

"Rankin County: Antioch, Cato, Clear Branch, Cleary, Dry Creek, East Steens Creek, Johns, Mayton, *Monterey, Mountain Creek, Puckett, Shiloh, *South Richland, Star and West Steens Creek Precincts.

"Simpson County: All.

"DISTRICT 36

"Claiborne County: All.

"Copiah County: Beauregard, Carpenter, Centerpoint, *Crystal Springs East, Crystal Springs North, Crystal Springs South, Crystal Springs West, Dentville, Gallman, Georgetown North, Hazlehurst East, Hazlehurst North, Hazlehurst South, Hazlehurst West and Martinsville Precincts.

"Hinds County: *Byram 2, Cayuga, Chapel Hill, Dry Grove, Learned, Raymond I, Raymond 2, St. Thomas, Utica 1 and Utica 2 Precincts.

"Jefferson County: All.

"DISTRICT 37

"Adams County: Airport, Beau Pre, Bellemont, Carpenter, Concord, Convention Center, Courthouse, Duncan Park, Kingston, Liberty Park, Maryland, Morgantown, Oakland, Palestine and Washington Precincts.

"Amite County: Crosby, East Fork, East Gloster, East Liberty, Homochitto, Liberty, New Zion, Oneil, Smithdale, South Liberty, Tangipahoa and Zion Hill Precincts.

"Franklin County: All.

"Pike County: 13, 14, 15, 20, 21, 22, 23, 25, 26, 27, 3 and 4 Precints.

"DISTRICT 38

"Adams County: By-Pass Firestation, Foster Mound, Northside School, Pine Ridge and Thompson Precincts.

"Amite County: Amite River, Ariel, Berwick, East Centreville, Gloster, Riceville, Street, Tickfaw and Walls Precincts.

"Pike County: 1, 10, 11, 12, 16, 17, 18, 19, 2, 24, 28, 29, 30, 31, 32, 5, 6, 7, 8 and 9 Precincts.

"Walthall County: Dexter, Dinan, District 3 Tylertown, Improve, Lexie, Mesa, Midway, North Kirklin, North Knoxo, Saint Paul, South Kirklin, South Knoxo and West Tylertown Precincts.

"Wilkinson County: All.

"DISTRICT 39

"Copiah County: Georgetown South, Shady Grove, Strong Hope-Union and Wesson Precincts.

"Lawrence County: All.

"Lincoln County: All.

"Walthall County: Darbun, District 4 Tylertown, District 4 West, East Tylertown, Enon, Hope, Sartinville and Varnell Precincts.

"DISTRICT 40

"Marion County: All.

"Pearl River County: Anchor Lake/West Union, Buck Branch, Carriere, Ford's Creek, Henleyfield, Hide-A-Way North Hills, McNeill 3, McNeill 5, Mill Creek, Nicholson, Ozona, Picayune 1 East, Picayune 2, Picayune 4 West, Picayune 5, Pine Grove and Sycamore Precincts.

"DISTRICT 41

"Covington County: All.

"Forrest County: Rawls Springs Precinct.

"Jefferson Davis: All.

"Lamar County: Rocky Branch and Sumrall Precincts.

"Smith County: All.

"DISTRICT 42

"Forrest County: Barrontown-Macedonia, Leeville, Petal Masonic Lodge and West Petal Precincts.

"Jones County: Antioch, Calhoun, Cameron Center, County Barn, Currie, Ellisville Court House, Erata, Glade School, Johnson, Landrum Community Center, Matthews, *Mauldin Community Center, Moselle, Myrick, *Nora Davis School, *North Laurel, Ovett, *Pendorf, Pinegrove , Pleasant Ridge, Powers Community Center, Roosevelt, Rustin, Sandersville Civic Center, Shady Grove, Sharon, South Jones, *Stainton, Tuckers and Union Precincts.

"DISTRICT 43

"George County: All.

"Greene County: All.

"Wayne County: All.

"DISTRICT 44

"Lamar County: Arnold Line, Baxterville, Bellevue, Breland, Greenville, Lake Serene, Lamar Park, Lumberton, Midway, Northeast Lamar, Oak Grove, Okahola, Oloh, Pine Grove, Purvis, Richburg, South Purvis, Wesley Manor and Yawn Precincts.

"Pearl River County: Byrd Line, Gum Pond, Hickory Grove, Oak Hill and *Poplarville 3 Precincts.

"DISTRICT 45

"Forrest County: Blair High School, Brooklyn, Camp School, Carnes, Dantzler, Dixie, Dixie Pine-Central, East Petal, Highland Park, Maxie, Mclaurin, Pinecrest, Sunrise, Thames School, Timberton, USM Golf Course, *Westside and Woodley School Precincts.

"Park, Maxie, Mclaurin, Pinecrest, Sunrise, Thames School, Timberton, USM Golf Course, *Westside and Woodley School Precincts.

"Perry County: All.

"DISTRICT 46

"Hancock County: All.

"Harrison County: 201, 212, 301, 304, 305, 306 and 315 Precincts.

"DISTRICT 47

"Jackson County: Gulf Hills, Larue, Latimer and St. Martin Precincts.

"Pearl River County: Caesar, Derby, Picayune 1 South, Picayune 4 East, Poplarville 1, Poplarville 2, *Poplarville 3, Progress, Salem, Savannah, Steep Hollow, Whitesand 1 and Whitesand 2 Precincts.

"Stone County: All.

"DISTRICT 48

"Harrison County: 206, 302, 303, 307, 308, 309, 310, 311, 312, 313, 314, *401, 402, 403, 404, 405, 407, 408, 409, 410, 411 and 412 Precincts.

"DISTRICT 49

"Harrison County: 202, 203, 204, 205, 207, 208, 209, 210, 211, 213, 214, 215, *401, 406, 503, 504, 505 and *510 Precincts.

"DISTRICT 50

"Harrison County: 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 501, 502, 506, 507, 508, 509 and *510 Precincts"

"DISTRICT 51

"Jackson County: Big Point, Carterville, Chico, Chico A, East Central, Eastside, Escatawpa, Escatawpa A, Escatawpa B, *Fountainbleau, Gautier A, Griffin Heights, Gulf Hills A, Gulf Hills B, Helena, Hickory Hills A, Hwy 57, Hwy 57A, Jefferson Street, North Pascagoula, North Vancleave, North Vancleave A, Ocean Springs Civic Center, Orange Grove, Orange Grove A, Rec Center, Rec Center A, Red Hill, Red Hill A, South Vancleave, South Vancleave A, Sue Ellen, Union Hall, Wade A and YMBC/Dantzler Precincts.

"DISTRICT 52

"Jackson County: American Legion, Arlington, Arlington A, Eastlawn, Fair, Fair A, Fair B, *Fountainbleau, Gautier, Gautier B, Gautier C, Girl Scout, Girl Scout A, Gulf Park Estates, Gulf Park Estates A, Hickory Hill, Nazarene, Ocean Springs Armory, Ocean Springs Civic Center A, Ocean Springs Community Center, Pinecrest, Pinecrest A, Presbyterian, Presbyterian A, Presbyterian B, Sacred Heart and Villia Maria Precincts.

"BE IT FURTHER RESOLVED, That partial or split precincts contained in this resolution are identified in this joint resolution by an asterisk (*) which shall precede its designation within the description of a district.

"BE IT FURTHER RESOLVED, That, except as otherwise provided in this resolution, the Chairman and Vice Chairman of the Standing Joint Legislative Committee on Reapportionment shall file with the Secretary of State the Split Precinct Block List developed in conjunction with the plan contained in this joint resolution that details the portions of the partial or split precincts that are contained within a district by census tract and block number, and such document duly filed with the Secretary of State is hereby incorporated into and shall be construed to be an integral part of this joint resolution.

"BE IT FURTHER RESOLVED, That the staff of the Standing Joint Legislative Committee on Reapportionment shall file with the Secretary of State the Split Precinct Block List developed in conjunction with the amendments Districts 13 and 22 contained in this joint resolution that details the portions of the partial or split precincts, if any, that are contained within the districts by census tract and block number, and such document duly filed with the Secretary of State is hereby incorporated into and shall be construed to be an integral part of this joint resolution.

"BE IT FURTHER RESOLVED, That the boundaries of the senatorial districts described above shall be:

"(a) The boundaries of the counties listed above as such boundaries existed as of January 1, 2010; and

"(b) The boundaries of the precincts, census tracts and blocks listed above as such boundaries are contained in the Census 2010 Tiger/Line Shapefiles released November 2010.

"BE IT FURTHER RESOLVED, That this resolution shall be liberally construed to effectuate the purposes thereof and to redistrict the Senate of this state in compliance with constitutional requirements.

"It is intended that this resolution and the districts described herein completely encompass all the area within the state. It is also intended that such districts contain all the inhabitants in this state. It is further intended that the redistricting provided for in this resolution result in the creation of districts which are substantially equal in population. It is also intended that no district shall include any of the area included within the description of any other district.

"BE IT FURTHER RESOLVED, That if the districts described in this resolution do not carry out the purposes thereof, because of unintentional omissions; duplications;

overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards or other divisions thereof, or of their boundary lines, then the Secretary of State, at the request of the Chair of the Senate Elections Committee shall, by order, correct such omissions, overlaps, erroneous nomenclature or other defects in the description of districts so as to accomplish the purposes and objectives of this resolution.

"BE IT FURTHER RESOLVED, That in promulgating such orders, the Secretary of State, in addition to achieving equality in the population of districts and insuring that all areas of the state are completely and accurately encompassed in such districts, shall be guided by the following standards:

"(a) In any instance in which there is a conflict between the description of a district as set out in this resolution and the map of the Senate Districts developed in conjunction with the adopted redistricting plan, the map shall control; however, in instances in which the map is inconclusive, the criteria set out in paragraphs (b) through (f) shall control the resolution of any dispute or issue regarding the composition of any Senate District;

"(b) Gaps in the description of any district shall be completed in a manner which results in a total description of that district in a manner which is consonant with the description of adjacent districts and results in complete contiguity of districts;

"(c) Areas of the state included within the descriptions of more than one (1) district shall be allocated to the district having the lowest population;

"(d) Areas of the state not included within the descriptions of any district shall be allocated to the adjacent district having the lowest population;

"(e) In the event that the area subject to corrected description or allocation as provided in paragraphs (b), (c) and (d) of this clause is of such size or contains such population that its inclusion as a unit in any district would result in substantial disparity in the size, shape or population of such district, then the Secretary of State may allocate portions of such area to two (2) or more districts; and

"(f) In any allocation of area or correction of descriptions made pursuant to this resolution, the Secretary of State shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and avoid the unnecessary division of political subdivisions.

"BE IT FURTHER RESOLVED, That copies of such orders shall be filed by the Secretary of State in his own office and in the offices of the affected commissioners of election and registrars. The Secretary of State may adopt reasonable rules regulating the procedure for applications for orders under this resolution in the manner of serving and filing any notice or copy of orders relating thereto. Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this resolution.

"BE IT FURTHER RESOLVED, That, except as otherwise provided in this resolution, the Standing Joint Legislative Committee on Reapportionment is directed to provide all information necessary to assist the counties in identifying the boundaries of the districts described in this resolution.

"BE IT FURTHER RESOLVED, That the staff of the Standing Joint Legislative Committee on Reapportionment is directed to provide all information necessary to assist the counties in identifying the boundaries of the districts described in amended Districts 13 and 22.

"BE IT FURTHER RESOLVED, That the qualifying deadline for Districts 13 and 22 as amended by this resolution shall be April 12, 2019, unless otherwise ordered by the court in the case of *Joseph Thomas, et al. v. Phil Bryant, et al.*, No. 19-60133 (5th Cir. Mar. 15, 2019).

"BE IT FURTHER RESOLVED, That the redistricting contained in this resolution shall supersede any prior redistricting, and any prior redistricting shall be null and void upon the date this resolution is effectuated.

"BE IT FURTHER RESOLVED, That this resolution shall be placed in the editor's notes that follow Section 5-1-3, Mississippi Code of 1972.

BE IT FURTHER RESOLVED, That if any paragraph, sentence, clause, phrase or any part of this resolution is declared to be unconstitutional or void or if for any reason is declared to be invalid or of no effect, the remaining paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

"BE IT FURTHER RESOLVED, That this resolution shall take effect and be in force from and after its passage; however, in the event that the appellants prevail in the appeal of the case of *Joseph Thomas, et al. v. Phil Bryant, et al.,* No. 19-60133 (5th Cir. Mar. 15, 2019), this resolution shall be repealed and the districts as originally configured in Chapter 2234, Laws of 2012, shall take effect."

Cross References — Constitutional provision for composition of Senate, see Miss. Const. Art. 4, § 35.

Constitutional provision for apportionment of the House of Representatives and the Senate, see Miss. Const. Art. 13, § 254.

Standing joint legislative committee on reapportionment, see § 5-3-91 et seq.

Provision that representatives in the legislature shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Provisions for filling vacancies in either house of the Legislature, see § 23-15-851.

JUDICIAL DECISIONS

1. In general.

To accomplish goal of interfering with state policy only to that extent necessary to remedy statutory or constitutional violations, court would adhere to Mississippi's established procedure for holding legislative elections, including party primaries, rather than using format for special elections, and elections would proceed for 3-year term of office to supplement interim elections filed in year that regular elections were required to be held under Mississippi statute. Watkins v. Fordice, 791 F. Supp. 646, 1992 U.S. Dist. LEXIS 7140 (S.D. Miss. 1992).

Use of 1982 reapportionment plan, which had been found unconstitutional, rather than court-drawn plan or plan proposed by parties, was constitutional and could properly be used on interim basis in order that primary and general elections for state legislature could take place as scheduled prior to implementation of valid, permanent plan, despite fact that 1982 plan did not maximize members of majority black districts; because of swiftness with which population changes, and high cost of creating new election districts, and in view of lack of sufficient time to conduct full hearings and fact that proponents of one proposed plan failed to show that plan cured objections by United States Attorney General, and since possibility of corrective relief at later date existed, use was appropriate. Watkins v. Mabus, 771 F. Supp. 789, 1991 U.S. Dist. LEXIS 12646 (S.D. Miss.), aff'd in part, vacated in part, 502 U.S. 954, 112 S. Ct. 412, 116 L. Ed. 2d 433, 1991 U.S. LEXIS 6598 (U.S. 1991). But see Watkins v. Mabus, 502 U.S. 954, 112 S. Ct. 412, 116 L. Ed. 2d 433, 1991 U.S. LEXIS 6598 (U.S. 1991).

House Bill No. 1290 and Senate Bill No. 2976, Mississippi Laws, 1975, Regular Session, reapportioning the state legislature, are not now and will not be effective as laws until and unless cleared pursuant to § 5 of the Voting Rights Act of 1965, 42 USCS § 1973c. Connor v. Waller, 421 U.S. 656, 95 S. Ct. 2003, 44 L. Ed. 2d 486, 1975 U.S. LEXIS 68 (U.S. 1975).

Mississippi statutes reapportioning the state legislature are legislative enactments that are required to be submitted for federal approval pursuant to § 5 of the Voting Rights Act of 1965 (42 USCS § 1973c), and such state statutes are not effective until and unless cleared pursuant to § 5; thus a United States District Court, after improperly concluding that § 5 is not applicable, also errs in deciding constitutional challenges to the state statute based upon claims of racial discrimination. Connor v. Waller, 421 U.S. 656, 95 S. Ct. 2003, 44 L. Ed. 2d 486, 1975 U.S. LEXIS 68 (U.S. 1975).

To establish a denial of equal protection by a state legislature's multimember districting plan, it must be shown that the plan will operate to minimize or cancel out the voting strength of racial or political elements of the voting population; there must be more evidence than a simple disproportionality between the voting potential and the legislative seats won by a racial or political group; there must be evidence that the group has been denied access to the political process equal to the access of other groups, and proof of lessening or cancellation of voting strength must be offered. Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766, 1975 U.S. LEXIS 25 (U.S. 1975).

Unless there are persuasive justifications, a federal court's reapportionment plan for a state's legislature must avoid use of multimember districts, and must ordinarily achieve the goal of population equality with little more than de minimis variation, although such plan is not required to attain the mathematical preciseness required for congressional redistricting; where important and significant state considerations rationally mandate departure from such standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted. Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766, 1975 U.S. LEXIS 25 (U.S. 1975).

All of the provisions of §§ 254 and 255 of the Mississippi Constitution of 1890, as amended, and as they existed prior to amendment, and Code 1942, §§ 3326 and 3327 as amended and as those sections read on July 22, 1966, are unconstitutional and invalid for all future elections of members of the House of Representatives and the Senate of the Mississippi Legislature, under the decision in Baker v. Carr, 369 US 186, 7 L. Ed. 2d 663, 82 S. Ct. 691, which enunciated the "one person-one vote" rule and required legislative reapportionment where it was necessary to secure compliance with the rule. Connor v. Johnson, 256 F. Supp. 962, 1966 U.S. Dist. LEXIS 6577 (S.D. Miss. 1966).

RESEARCH REFERENCES

ALR.

Application of constitutional "compactness requirement" to redistricting. 114 A.L.R.5th 311.

State court jurisdiction over congressional redistricting disputes. 114 A.L.R.5th 387.

Diluting effect of minorities' votes by adoption of particular election plan, or gerrymandering of election districts, as violation of equal protection clause of Federal Constitution. 27 A.L.R. Fed. 29.

Am. Jur.

25 Am. Jur. 2d, Elections §§ 13 et seq.

CJS.

81A C.J.S., States §§ 216 et seq.

Lawyers' Edition.

Constitutionality of state legislative apportionment – Supreme Court cases. 77 L. Ed. 2d 1496.

§ 5-1-4. Nomination and election of senators by posts in districts where more than one senator is to be elected.

To minimize confusion in the electoral process, in all districts for the election of more than one (1) senator, each senator shall be nominated and elected by posts in order that the voter may have a clear-cut choice for each seat to be chosen from a specific group of candidates (*Chapman v. Meier*, Supreme Court decision).

HISTORY: Laws, 1975, ch. 484, § 2, eff from and after passage (approved April 7, 1975).

Editor's Notes — The full citation for the case cited in this section is: Chapman v. Meier 420 U.S. 1, 42 L. Ed. 2d 766, 95 S. Ct. 751 (1975).

JUDICIAL DECISIONS

1. In general.

To establish a denial of equal protection by a state legislature's multimember districting plan, it must be shown that the plan will operate to minimize or cancel out the voting strength of racial or political elements of the voting population; there must be more evidence than a simple disproportionality between the voting potential and the legislative seats won by a racial or political group; there must be evidence that the group has been denied access to the political process equal to the access of other groups, and proof of lessening or cancellation of voting strength must be offered. Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766, 1975 U.S. LEXIS 25 (U.S. 1975).

Unless there are persuasive justifications, a federal court's reapportionment plan for a state's legislature must avoid use of multimember districts, and must ordinarily achieve the goal of population equality with little more than de minimis variation, although such plan is not required to attain the mathematical preciseness required for congressional redistricting; where important and significant state considerations rationally mandate departure from such standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted. Chapman v. Meier, 420 U.S. 1, 95 S. Ct. 751, 42 L. Ed. 2d 766, 1975 U.S. LEXIS 25 (U.S. 1975).

RESEARCH REFERENCES

Lawyers' Edition.

Constitutionality of state legislative apportionment – Supreme Court cases. 77 L. Ed. 2d 1496.

§ 5-1-5. Qualified person may be candidate for state senator; election conducted on senatorial district basis; names on ballots.

Any qualified elector of any senatorial district, as defined in Section 5-1-3, who possesses the necessary constitutional qualifications may qualify as a candidate and be elected a state senator without regard to any so-called gentleman's agreement or any other restriction. All elections for the office of state senator shall be conducted on a senatorial district basis regardless of the number of counties composing said district, and the names of qualified candidates therefor shall be placed on the ballots in each precinct of every county within said senatorial district.

HISTORY: Codes, 1942, § 3327.5; Laws, 1963, 1st Ex Sess. ch. 34, § 2, eff from and after passage (approved March 2, 1963).

RESEARCH REFERENCES

CJS.

81A C.J.S., States §§ 147–154, 174–195.

§ 5-1-7. Holding of meetings.

The legislature shall meet at the seat of government, in regular session, on the first Tuesday after the first Monday of January, in the year A.D. 1971, and every year thereafter, unless sooner convened by the governor; and should a quorum of either house not be present, each house shall be adjourned from day to day, after taking the necessary steps to compel the attendance of absent members until a quorum appears.

HISTORY: Codes, 1892, § 2648; 1906, § 3008; Hemingway's 1917, § 5396; 1930, § 5331; 1942, § 3328; Laws, 1912, ch. 231; Laws, 1970, ch. 463, § 1, eff from and after passage (approved February 18, 1970).

Cross References — Constitutional provisions for meeting of legislature, see Miss. Const. Art. 4, § 36.

Who is to be governor in certain contingencies, see § 7-1-67.

Continuance of action or proceeding where counsel is legislator, see § 11-1-9.

Criminal disturbance of legislative powers and meetings, see §§ 97-7-45 et seq.

RESEARCH REFERENCES

ALR.

Constitutionality of Legislative Prayer Practices. 30 A.L.R.6th 459.

CJS.

81A C.J.S., States §§ 155, 196–204.

§ 5-1-9. Organization of the house of representatives.

At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislature the secretary of state shall take the chair in the hall of the house of representatives, and call over the roll of counties in alphabetical order, and of the representative districts composed of more or less than one county. Upon the call of such roll the members-elect therefrom shall present their certificates of election, which shall be prima facie evidence of the right to membership. After the call of the roll and the presentation of said certificates, each member so present shall then take the oath of office prescribed by section forty of the constitution, which oath may be administered by the secretary of state. The secretary of state shall cause to be kept, by the clerk of the last house or other suitable person, a record of the proceedings of organization, which shall form a part of the journal of the house. At any other than a regular session, a new member, on presentation of his certificate of election, shall be sworn as in other cases.

HISTORY: Codes, 1892, § 2649; 1906, § 3009; Hemingway's 1917, § 5397; 1930, § 5332; 1942, § 3329.

Cross References — Constitutional provision allowing each house of legislature to elect own officers, see Miss. Const. Art. 4, § 38.

Officers' oath of office, see Miss. Const. Art. 14, § 268.

Who may administer oath of office to officers, see § 25-1-9.

RESEARCH REFERENCES

CJS.
81A C.J.S., States § 162.

§ 5-1-11. Election of officers of house of representatives.

Having selected some member for the chair pro tempore, the house of representatives shall then choose, by a viva voce vote of a majority of the members present, the votes being entered on the journal, a speaker, and a clerk.

HISTORY: Codes, 1857, ch. 5, art. 3; 1871, § 330; 1880, § 173; 1892, § 2650; 1906, § 3010; Hemingway's 1917, § 5398; 1930, § 5333; 1942, § 3330; Laws, 1964, ch. 484; Laws, 1971, ch. 416, § 1, eff from and after passage (approved March 23, 1971).

Cross References — Constitutional provision for election of legislative officers, see Miss. Const. Art. 4, § 38.

RESEARCH REFERENCES

CJS.
81A C.J.S., States §§ 171, 173.

§ 5-1-13. Organization of the senate.

At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the legislature, the lieutenant-governor shall take the chair in the senate chamber and call the list of senatorial districts in their numerical order. Upon the call of districts the senators-elect therefrom shall present their certificates of election, which shall be prima facie evidence of the right of membership. After the call of districts and the presentation of the certificates, each senator then present shall take the oath of office prescribed by section forty of the constitution, which oath may be administered by the lieutenant-governor. The lieutenant-governor shall cause to be kept, by the secretary of the last senate or other proper person, a record of the proceedings of organization, which shall form a part of the journal of the senate. At any session where the senate has been previously organized, any new senator, on presenting his certificate of election, shall be sworn as in other cases.

HISTORY: Codes, 1892, § 2651; 1906, § 3011; Hemingway's 1917, § 5399; 1930, § 5334; 1942, § 3331.

Cross References — Constitutional provision allowing each house of the legislature to elect its own officers, see Miss. Const. Art. 4, § 38.
Officers' oath of office, see Miss. Const. Art. 14, § 268.
Governor convening the senate in vacation of the legislature, see § 7-1-37.
Who may administer oath of office to officers, see § 25-1-9.

RESEARCH REFERENCES

CJS.
81A C.J.S., States § 162.

§ 5-1-15. Election of officers of the senate.

The senate shall proceed, by viva voce vote of a majority of the senators present, to elect a secretary, a sergeant-at-arms and a doorkeeper. The votes shall be entered on the journal. In like manner the senate shall proceed to choose a president of the senate pro tempore, who shall preside in the absence of the lieutenant governor.

HISTORY: Codes, 1857, ch. 5, art. 3; 1871, § 329; 1880, § 175; 1892, § 2652; 1906, § 3012; Hemingway's 1917, § 5400; 1930, § 5335; 1942, § 3332. 1983, ch. 328, § 1, eff from and after passage (approved March 9, 1983).

Cross References — Constitutional provision for election of legislative officers, see Miss. Const. Art. 4, § 38.

RESEARCH REFERENCES

CJS.
81A C.J.S., States §§ 171, 173.

§ 5-1-17. Organization in absence of the proper officer.

Should the secretary of state or lieutenant-governor from any cause fail to appear at the time fixed for organizing the respective houses, it shall be the duty of a judge of the Supreme Court, or, in case of emergency, then of any officer qualified to administer oaths, to perform the duties in and about the organizations of said houses prescribed to be performed by the secretary of state and lieutenant-governor respectively; but if the senate be organized by any other officer than the lieutenant-governor, some senator shall be selected to preside pro tempore before entering upon the election of officers.

HISTORY: Codes, 1892, § 2653; 1906, § 3013; Hemingway's 1917, § 5401; 1930, § 5336; 1942, § 3333.

RESEARCH REFERENCES

CJS.
81A C.J.S., States § 162.

§ 5-1-19. Officers of the legislature and committee chairmen authorized to administer oaths.

The lieutenant-governor, the president pro tempore of the senate, the secretary of the senate, the speaker of the house of representatives, and the clerk thereof, may administer oaths to the officers of their respective houses, and each shall take the oath of office prescribed by section two hundred and sixty-eight of the constitution. Each of said officers may administer oaths to witnesses before their respective houses, or any committee thereof, and the chairman of the committee of the whole, or of any standing, select, or special committee, or subcommittee of either house, or of any joint committee or subjoint committee, may administer oaths to witnesses before it in any case under examination.

HISTORY: Codes, 1892, § 2654; 1906, § 3014; Hemingway's 1917, § 5402; 1930, § 5337; 1942, § 3334.

Cross References — Witness testifying in trial of crimes against legislative power, see § 99-17-31.

§ 5-1-21. Subpoena for witnesses.

A subpoena requiring the attendance of any witness before either house of the legislature, or a committee thereof, may be issued by the presiding officer or the chairman of any committee before which the attendance of the witness is desired. Such subpoena may be served by any person who might be a witness in the matter of its service, and his affidavit that he delivered a copy to the witness shall be evidence of service.

HISTORY: Codes, 1892, § 2655; 1906, § 3015; Hemingway's 1917, § 5403; 1930, § 5338; 1942, § 3335.

Cross References — Witness testifying in trial of crimes against legislative power, see § 99-17-31.

Subpoenas and witnesses before legislative bodies, see Miss Rule Civil Proc. 45.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. Pl & Pr Forms (Rev), Witnesses, Form 71.

CJS.

81A C.J.S., States §§ 199, 200.

§ 5-1-23. Proceedings against recalcitrant witnesses.

If any witness neglects or refuses to obey a subpoena, or, appearing, refuses to testify, the senate or house may, by a resolution entered on its journal, commit him for contempt, the commitment not to extend beyond the final adjournment of the session; and any witness neglecting and refusing to attend in obedience to a subpoena may be arrested by the sergeant-at-arms and brought before the senate or house; and a copy of the resolution of the senate or house, signed by the presiding officer thereof, and attested by the secretary or clerk, shall be sufficient authority to authorize such arrest.

HISTORY: Codes, 1892, § 2656; 1906, § 3016; Hemingway's 1917, § 5404; 1930, § 5339; 1942, § 3336.

Cross References — Witness testifying in trial of crimes against legislative power, see § 99-17-31.

RESEARCH REFERENCES

CJS.
81A C.J.S., States §§ 212–215.

§ 5-1-25. Witnesses not liable to prosecution in certain cases.

A person sworn and examined as a witness before either house, without procurement or contrivance, on his part, shall not be held to answer criminally, or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify; nor shall any statement made, or book, document, or paper produced by any such witness be competent evidence in any criminal proceeding against such witness other than for perjury in delivering his evidence; nor shall such witness refuse to testify to any fact or to produce any book, document, or paper touching which he is examined, on the ground that he thereby will criminate himself, or that it will tend to disgrace him or render him infamous.

HISTORY: Codes, 1892, § 2657; 1906, § 3017; Hemingway's 1917, § 5405; 1930, § 5340; 1942, § 3337.

Cross References — Witness testifying in trial of crimes against legislative power, see § 99-17-31.

JUDICIAL DECISIONS

1. In general.

A state senator convicted of being interested in a contract with the state authorized by a law passed during his term of office as prohibited by § 97-11-19 [Repealed] was not immune from prosecution under § 5-1-25 where, although he had met with other senators who told him that the Rules Committee of the Senate had voted to file a resolution of expulsion against him before the full Senate, such meeting had not been an investigation of any kind, the senator had not been sworn in to testify, no stenographer had been present, no minutes had been made, and what the senator had said to his colleagues was of no benefit whatsoever to the criminal prosecution. Cassibry v. State, 404 So. 2d 1360, 1981 Miss. LEXIS 2223 (Miss. 1981).

The mere fact that a defendant under indictment appeared before a legislative subcommittee without formal summons does not prevent him from claiming the immunity provided by this section [Code 1942, § 3337]. Kellum v. State, 194 So. 2d 492, 1967 Miss. LEXIS 1410 (Miss. 1967).

One who is required by the power of the state to testify to his hurt is immune from prosecution for the thing for which he was required to testify, whether that testimony is used by the state or not. Kellum v. State, 194 So. 2d 492, 1967 Miss. LEXIS 1410 (Miss. 1967).

One compelled to testify before a legislative committee was immune from prosecution for embezzlement where the facts and acts brought out in his testimony were separate links in the whole chain of his indictment, prosecution and conviction. Wheat v. State, 201 Miss. 890, 30 So. 2d 84, 1947 Miss. LEXIS 461 (Miss. 1947); Schneider v. State, 202 Miss. 1, 30 So. 2d 90, 1947 Miss. LEXIS 232 (Miss. 1947).

Gasoline distributor who voluntarily appeared before investigating committee of State Senate and offered evidence could not be convicted of conspiracy to defraud State of gasoline excise taxes in view of statute furnishing immunity from criminal prosecution whether evidence is given voluntarily or as result of compulsion, provided, if voluntary, it is given without procurement or contrivance on part of witness. State v. Billups, 179 Miss. 352, 174 So. 50, 1937 Miss. LEXIS 10 (Miss. 1937).

RESEARCH REFERENCES

Law Reviews.

Legislator Guilty of Misdemeanor if He Has Direct Interest in Contract Authorized by Legislature. 52 Miss. L. J. 659, September 1982.

§ 5-1-27. Perjury.

Every witness shall be liable to prosecution and punishment for perjury committed by him in any examination. Moreover, if the perjury be manifest, such witness shall be guilty thereby of contempt of the senate or house, as the case may be, and shall be punished accordingly.

HISTORY: Codes, 1892, § 2658; 1906, § 3018; Hemingway's 1917, § 5406; 1930, § 5341; 1942, § 3338.

Cross References — Wilful and corrupt swearing, see § 97-9-59.

§ 5-1-29. Additional duties of legislators.

In addition to the duties now required by law, each legislator shall attend at least two (2) meetings of the board of supervisors of the county he or she represents, and, in the case of floater representatives and senators who represent more than one (1) county, each shall attend at least one (1) meeting of the board of supervisors in each of the counties in his or her flotorial or senatorial district, as the case may be, during each biennium of his or her term of office. Each legislator shall attend at least two (2) meetings of the city or town board of aldermen or city council, as the case may be, of the city or town in which he or she resides, and if he or she resides in no city or town, the city or town where the county site of government is located, during each biennium of his or her term of office, such visits to be for the purpose of informing said legislators of the county and city and/or town affairs. The legislators shall visit the universities and state senior colleges and also each of the eleemosynary and penal institutions of the state. The legislators shall study the educational programs of the common schools, colleges and public schools and visit in the public schools of his or her county or district. The legislators shall also attend meetings called by the governor for the purpose of discussing affairs of the state, and it shall be the duty of such legislators to attend meetings of any standing committees, of which he or she is a member, between sessions of the legislature.

HISTORY: Codes, 1930, § 5348; 1942, § 3345; Laws, 1928, ch. 297; Laws, 1932, ch. 260; Laws, 1933, ch. 151; Laws, 1946, ch. 198; Laws, 1950, ch. 456; Laws, 1956 ch. 357, § 1; Laws, 1958, ch. 521, § 1; Laws, 1960, ch. 327; Laws, 1966, ch. 436, § 1; Laws, 1972, ch. 356, § 1, eff from and after passage (approved April 20, 1972).

§ 5-1-31. Duties of secretary and clerk.

The secretary of the senate and clerk of the house of representatives shall keep a correct journal of the proceedings of their respective houses, and, on each day, shall read over the journal of the preceding day to their respective houses. They shall number, file and preserve in its proper order, each bill, resolution, memorial or other paper introduced in their respective houses, and carefully engross and enroll all bills, resolutions, memorials and other papers that may be ordered to be engrossed or enrolled. They shall promptly and faithfully discharge all the duties incident to their respective offices.

HISTORY: Codes, 1857, ch. 5, art. 4; 1871, § 334; 1880, § 177; 1892, § 2659; 1906, § 3019; Hemingway's 1917, § 5407; 1930, § 5342; 1942, § 3339; Laws, 1931, ch. 7; Laws, 1983, ch. 329, § 2, eff from and after passage (approved March 9, 1983).

Cross References — Duties of secretary and clerk in relation to meeting times and places of committees, see § 25-41-13.

Criminal disturbance of legislature bills, see §§ 97-7-49 et seq.

JUDICIAL DECISIONS

1. In general.

It is apparent from the language of § 3339, Mississippi Code 1942 that if the Secretary of the Senate had a duty of delivering a Senate Bill with a veto message attached to the Secretary of State, it arose as a duty incident to the office and not by the terms of the statute, and to be subject to mandamus the action must be either an official duty or a mere ministerial act not involving discretion for its performance. Tate v. State, 290 So. 2d 263, 1974 Miss. LEXIS 1699 (Miss. 1974).

§ 5-1-33. Provision of manuscripts and indexes of House and Senate journals.

The Secretary of the Senate and the Clerk of the House of Representatives shall prepare and furnish to the Secretary of State a true copy of the manuscripts of the journals of their respective houses together with complete indexes to the journals. The Secretary of State shall transmit the manuscripts of the journals and the indexes to the person or firm contracted with to print the same for publication. The Secretary of State is designated as the contracting officer for the purposes of this section, and he shall require the person or firm so contracted with to give bond with sufficient sureties or security in such penalties and with such conditions as he shall require.

HISTORY: Codes, 1857, ch. 5, art. 6; 1871, § 336; 1880, § 178; 1892, §§ 2660, 2661; 1906, §§ 3020, 3021; Hemingway's 1917, §§ 5408, 5409; 1930, §§ 5343, 5344; 1942, §§ 3340, 3341; Laws, 1968, ch. 506, § 2; Laws, 1998, ch. 546, § 15, eff from and after July 1, 1998.

Cross References — Secretary of state as custodian of “Mississippi Reports”, see § 7-3-11.

Printing of the journals and indexes of the two houses of the legislature, see § 31-1-17.

§ 5-1-35. Duty of the sergeant-at-arms.

The sergeant-at-arms of the senate shall give a general supervision, under the direction of the presiding officer. He shall attend the sittings thereof, preserve order, execute its commands and all process issued by its authority, and shall have control of the doorkeeper. He shall see that the hall of the senate and the committee rooms and the room of its presiding officer, the anterooms, lobbies and galleries thereof, are clean, comfortable and lighted at night during the sitting of the senate, and that all necessary conveniences are supplied to the members, officers and committees.

HISTORY: Codes, 1892, § 2662; 1906, § 3022; Hemingway's 1917, § 5410; 1930, § 5345; 1942, § 3342; Laws, 1971, ch. 416, § 2; Laws, 1983, ch. 329, § 3, eff from and after passage (approved March 9, 1983).

Cross References — For crime of disturbing the legislature, see § 97-7-47.

§ 5-1-37. Repealed.

Repealed by Laws, 1983, ch. 329, § 4, eff from and after passage (approved March 9, 1983).

§ 5-1-37. [Codes, 1892, § 2663; 1906, § 3023; Hemingway's 1917, § 5411; 1930, § 5346; 1942, § 3343]

Editor's Notes — Former § 5-1-37 prescribed duties of the doorkeepers of each house.

§ 5-1-39. Dismissal of officers and servants.

Each house shall have power at any time to dismiss any or all of its officers and servants elected or appointed by it, and to elect or appoint others in their places.

HISTORY: Codes, 1892, § 2664; 1906, § 3024; Hemingway's 1917, § 5412; 1930, § 5347; 1942, § 3344.

§ 5-1-41. Remuneration of legislators.

Beginning with the 1986 Regular Session of the Legislature of the State of Mississippi, each Senator and Representative of the Legislature shall receive as compensation at each regular session the sum of Ten Thousand Dollars ($10,000.00) and the mileage allowance provided by Section 25-3-41, for each mile of the distance by the most direct route usually traveled in coming to and returning from the place where the Legislature sits. Beginning on April 16, 1997, each Senator and Representative shall receive for attending each extraordinary session or called session the sum of Seventy-five Dollars ($75.00) per day and mileage at the same rate as per regular session. In addition to the above, beginning on April 16, 1997, each Senator and Representative and the Lieutenant Governor shall receive the sum of One Thousand Five Hundred Dollars ($1,500.00) per month for expenses incidental to his office for every full month of his term, except any month or major fraction there of when the Legislature is convened in regular or extraordinary session; and payments shall be made to each Senator and Representative and the Lieutenant Governor by the State Treasurer between the first and tenth day of each month following the month for which the payments are due.

HISTORY: Codes, 1930, § 5348; 1942, § 3345; Laws, 1928, ch. 297; Laws, 1932, ch. 260; Laws, 1933, ch. 151; Laws, 1946, ch. 198; Laws, 1950, ch. 456; Laws, 1956, ch. 357, § 1; Laws, 1958, ch. 521, § 1; Laws, 1960, ch. 327; Laws, 1966, ch. 436, § 1; Laws, 1972, ch. 356, § 1, 1974, ch. 531, § 1; Laws, 1985, ch. 409, § 1; Laws, 1988, ch. 490; Laws, 1997, ch. 577, § 6; Laws, 1999, ch. 581, § 5, eff from and after June 17, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — On June 4, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1997, ch. 577, § 6.

Laws of 1999, ch. 581, § 7 provides:

"SECTION 7. Sections 1, 2 and 4 of this act shall take effect and be in force from and after July 1, 1999. Sections 3 and 5 of this act shall take effect and be in force from and after July 1, 1999, if they are effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If Sections 3 and 5 are effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, after July 1, 1999, Section 3 and Section 5 shall take effect and be in force from and after the date they are effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 581, § 5.

Cross References — Remuneration of lieutenant governor and speaker of the house, see § 5-1-43.

Mileage and expense allowances of lieutenant governor, senators, and representatives, see § 5-1-47.

When compensation is due, see § 5-1-51.

Per diem compensation of the standing joint legislative committee on reapportionment based on the compensation of legislators during special sessions, see § 5-3-95.

Per diem compensation of the standing joint congressional redistricting committee based on the compensation of legislators during special sessions, see § 5-3-125.

Provision that, for purposes of certain statutes relative to social security and public employees' retirement and disability benefits, "earned compensation" of members of the state legislature shall include remuneration under this section, see § 25-11-103.

Exclusion of mileage allowances under this section from compensation for purpose of determining contributions to the supplemental legislative retirement plan, see § 25-11-307.

RESEARCH REFERENCES

CJS.

81A C.J.S., States §§ 184–195.

§ 5-1-43. Remuneration of lieutenant governor and speaker of the house.

(1) The salary of the Lieutenant Governor and of the Speaker of the House of Representatives shall be Sixty Thousand Dollars ($60,000.00) annually, and they shall receive for attending each extraordinary or called session the same compensation and mileage as is provided for members of the Legislature. However, in the event the Lieutenant Governor serving on the effective date of Laws, 1997, chapter 577, shall be re-elected for the term beginning in the year 2000, he shall continue to receive an annual salary of Forty Thousand Eight Hundred Dollars ($40,800.00).

(2) On the first day of each month, the Lieutenant Governor and the Speaker of the House of Representatives shall receive in twelve (12) equal monthly installments the compensation provided for pursuant to subsection (1) of this section.

HISTORY: Codes, 1930, § 5349; 1942, § 3346; Laws, 1928, ch. 297; Laws, 1946, ch. 198; Laws, 1950, ch. 456; Laws, 1956, ch. 357, § 1; Laws, 1960, ch. 328; Laws, 1966, ch. 436, § 2; Laws, 1976, ch. 531, § 2; Laws, 1980, ch. 301; Laws, 1988, ch. 579, § 1; Laws, 1997, ch. 577, § 7, eff from and after January 1, 1998.

Editor's Notes — Laws, 1997, ch. 577, § 11, provides, in pertinent part, as follows:

"SECTION 11. . . . Section 7 of this act shall take effect and be in force from and after January 1, 1998, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended; if it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, after January 1, 1998, Section 7 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On June 4, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1997, ch. 577, § 7.

Laws, 1997, ch. 577, referenced in subsection (1), amended sections 25-3-31 through 25-3-35, 25-31-5, 5-1-41 through 5-1-45, repealed section 25-3-32, and enacted section 5-1-46.

Cross References — Constitutional provision for compensation of lieutenant governor and speaker of the house, see Miss. Const. Art. 5, § 130.

Remuneration of legislators, see § 5-1-41.

Additional mileage and expense allowances of lieutenant governor, senators, and representatives, see § 5-1-47.

When compensation is due, see § 5-1-51.

Exclusion of mileage allowances under this section from compensation for purposes of determining contributions to the supplemental legislative retirement plan, see § 25-11-307.

§ 5-1-45. Remuneration of the president pro tempore of the senate.

Beginning on June 4, 1997, the President Pro Tempore of the Senate shall receive an annual salary in an amount equal to Fifteen Thousand Dollars ($15,000.00). The salary provided for the President Pro Tempore under this section shall be in addition to the compensation and expense allowance established for members of the Legislature under Section 5-1-41.

HISTORY: Codes, 1880 § 185; 1892, § 2669; 1906, § 3029; Hemingway's 1917, § 5417; 1930, § 5350; 1942, § 3348; Laws, 1912, ch. 231; Laws, 1946, ch. 198; Laws, 1950, ch. 456; Laws, 1956, ch. 357, § 1; Laws, 1997, ch. 577, § 8, eff from and after June 4, 1997 (the date the Unites States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Notes — On June 4, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1997, ch. 577, § 8.

§ 5-1-46. Remuneration of the Speaker Pro Tempore of the House of Representatives.

Beginning on June 4, 1997, the Speaker Pro Tempore of the House of Representatives shall receive an annual salary in an amount equal to Fifteen Thousand Dollars ($15,000.00). The salary provided for the Speaker Pro Tempore under this section shall be in addition to the compensation and expense allowance established for members of the Legislature under Section 5-1-41.

HISTORY: Laws, 1997, ch. 577, § 9, eff from and after June 4, 1997 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section).

Editor's Notes — On June 4, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Laws, 1997, ch. 577, § 9.

§ 5-1-47. Additional mileage and expense allowances of lieutenant governor, senators, and representatives.

(1) In addition to the regular salary and mileage provided by law, an expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations for each legislative day in actual attendance at a session shall be paid to the Lieutenant Governor and members of the Senate and House of Representatives, together with an additional mileage allowance as provided by Section 25-3-41, for each mile of the distance by the most direct route usually traveled in coming to and returning from the place where the Legislature is in session, which expense allowance and additional mileage allowance shall be paid at the end of each seven-day period while the Legislature is in session.

(2) In addition to the mileage allowance provided for in subsection (1) of this section, an expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations, per day, shall be paid to:

(a) The Lieutenant Governor and members of the Senate, upon the approval of the Senate Rules Committee, for attending to legislative duties on any of the following days that the Senate does not convene in session on that day: (i) any day between legislative regular or extraordinary sessions, or (ii) any day of a legislative regular session that has been extended beyond the number of calendar days specified in Section 36, Mississippi Constitution of 1890, when that day falls after the ninetieth or one-hundred-twenty-fifth day of the session, as the case may be, or (iii) any day during a legislative extraordinary session; and

(b) Members of the House of Representatives, upon the approval of the House Management Committee, for attending to legislative duties on any of the following days that the House does not convene in session on that day: (i) any day between legislative regular or extraordinary sessions, or (ii) any day of a legislative regular session that has been extended beyond the number of calendar days specified in Section 36, Mississippi Constitution of 1890, when that day falls after the ninetieth or one-hundred-twenty-fifth day of the session, as the case may be, or (iii) any day during a legislative extraordinary session.

(3) The expense allowance and additional mileage allowance provided by this section for the Lieutenant Governor and members of the Senate shall be paid from the appropriate legislative fund of the Senate as provided by law, and the expense allowance and additional mileage allowance for members of the House of Representatives shall be paid from the appropriate legislative fund of the House of Representatives as provided by law, upon warrants drawn for such purpose in the manner provided by law.

HISTORY: Codes, 1942, § 3346.5; Laws, 1950, ch. 449; Laws, 1952, ch. 326, §§ 1, 2; Laws, 1960, ch. 326, §§ 1, 2; Laws, 1966, ch. 437, §§ 1, 2; Laws, 1970, ch. 396, § 1; Laws, 1972, ch. 356, § 2; Laws, 1974, ch. 302; Laws, 1980, ch. 560, § 2; Laws, 1985, ch. 409, § 2; Laws, 1985, ch. 539; Laws, 1988, ch. 314, § 3; Laws, 2009, ch. 483, § 2, eff from and after passage (approved Apr. 3, 2009).

Cross References — Remuneration of legislators, see § 5-1-41.

Remuneration of lieutenant governor and speaker of the house, see § 5-1-43.

Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

Exclusion of mileage allowances under this section from compensation for purpose of determining contributions to the supplemental legislative retirement plan, see § 25-11-307.

§ 5-1-49. Repealed.

Repealed by Laws, 1983, ch. 329, § 4, eff from and after passage (approved March 9, 1983).

§ 5-1-49. [Codes, 1942, § 3347; Laws, 1932, ch. 325]

Editor's Notes — Former § 5-1-49 provided for compensating a retiring lieutenant governor or secretary of the senate for extra duties performed at the end of a term of office.

§ 5-1-51. When compensation is due.

The mileage and one-third (⅓) of the salary for a regular session shall be paid at the beginning of the session. After thirty (30) days of the session have expired, another one-third (⅓) of the salary shall be paid. The remaining one-third (⅓) of the salary shall be paid (a) on the last Friday before the ninetieth day of a ninety-day session, or (b) on the earlier of the last day the Legislature is convened or the last Friday before the one-hundred-twenty-fifth day of a one-hundred-twenty-five-day session, as the case may be.

HISTORY: Codes, 1880, § 183; 1892, § 2667; 1906, § 3027; Hemingway's 1917, § 5415; 1930, § 5351; 1942, § 3349; Laws, 1912, ch. 231; Laws, 1938, ch. 169; Laws, 1946, ch. 379; Laws, 1954, ch. 325; Laws, 1956, ch. 357, § 2; Laws, 2009, ch. 483, § 1, eff from and after passage (approved Apr. 3, 2009).

§ 5-1-53. Repealed.

Repealed by Laws, 1983, ch. 329, § 4, eff from and after passage (approved March 9, 1983).

§ 5-1-53. [Codes, 1880, § 187; 1892, § 2670; 1906, § 3030; Hemingway's 1917, § 5418; 1930, § 5352; 1942, § 3350; Laws, 1931, ch. 8]

Editor's Notes — Former § 5-1-53 prescribed the compensation to be paid to officers and servants of the legislature.

§ 5-1-55. How compensation is obtained.

The compensation of the members, officers, and servants of the legislature shall be certified by the president of the senate and speaker of the house of representatives, respectively, to the auditor of public accounts, who shall issue his warrant on the treasurer therefor, payable out of the legislative appropriation.

HISTORY: Codes, Hutchinson's 1848, ch. 17, art. 7 (4); 1857, ch. 5, art. 12; 1871, § 333; 1880, § 189; 1892, § 2671; 1906, § 3031; Hemingway's 1917, § 5419; 1930, § 5353; 1942, § 3351.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2011, ch. 506, § 2, provides:

"SECTION 2. On or before July 1 of each fiscal year, or at such other times as necessary, the Clerk of the House of Representatives or the Secretary of the Senate ("the Legislature") shall submit a request to the State Fiscal Officer for the funds necessary to pay (a) the expenses of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, (b) the state's share of various assessments from legislative-related organizations, and (c) any other legislative-related expenses. The State Fiscal Officer shall transfer to the Legislature the amount or amounts as requested by the Legislature from the Secretary of State's Fund No. 3111. The State Fiscal Officer shall transfer such obligated funds in a timely manner as determined by the Legislature. The Legislature is authorized to escalate the appropriate budgets during the fiscal year by the respective amounts transferred and to expend those sums for the purposes authorized by law."

On April 26, 2011, the Governor vetoed Section 2 of Chapter 506, Laws of 2011.

On June 1, 2011, the Mississippi Attorney General issued the following opinion regarding the constitutionality of the Governor's partial veto of Chapter 506, Laws of 2011:

"Honorable Johnny W. Stringer
"Chairman, House Appropriations Committee
"P. O. Box 1018
"Jackson, MS 39215-1018

"Re: Partial veto under Section 73 of the Mississippi Constitution

"Dear Chairman Stringer:

"Attorney General Jim Hood received your request and assigned it to me for research and response.

"Issue Presented

"Does the Governor under his partial veto authority of Section 73 of the Mississippi Constitution of 1890 have authority to veto a section of a general bill that he asserts is an appropriation within the general bill, when that section does not meet the criteria for an appropriation bill under the Mississippi Constitution?

"Response

"No. House Bill No.1 054 of the 2011 Regular Session, which is the subject of your request, is not an appropriation bill and is not subject to partial veto under Section 73 of the Mississippi Constitution of 1890.

"Background

"On April 26, 2011, the Governor returned House Bill No. 1054 to the House of Representatives with a partial veto message for Section 2 of the bill. House Bill No. 1054, which is generally known as the 'transfer bill,' is a bill that, among other things, provides for the transfer of state funds into certain accounts for use in the general fund appropriations process. The Governor said in his message that he was not concerned with the transfer components of the bill, but had concerns specifically with Section 2 of the bill.

"Applicable Law and Discussion

"Under the Mississippi Constitution of 1890 (hereinafter 'Mississippi Constitution'), the powers of government are divided between and among three separate and distinct departments, to wit, the legislative department, the executive department and the judicial department. Miss. Const. Art. 1, Sec. 1 (1890). No person belonging to one department is authorized to exercise core powers belonging to another department. Miss. Const. Art. 1, Sec. 2 (1890); Dye v. State ex rel. Hale, 507 So. 2d 332 at 343 (Miss. 1987); and Alexander v. State ex rel. Alain, 441 So. 2d 1329 (Miss. 1983).

"The enactment of laws is an exercise of legislative power, which is subject to the executive power of veto. The Mississippi Constitution authorizes two types of vetoes, one which is applicable to all bills and is total in nature and another which is applicable only to appropriation bills and is partial in nature.

"Section 72[1] authorizes the Governor to approve or disapprove, by way of veto, every bill that passes both houses of the Legislature:

"Every Bill which shall pass both Houses shall be presented to the Governor of the state. If he approve, he shall sign it; but if he does not approve, he shall return it, with his objections, to the House in which it originated, which shall enter the objections at large upon its Journal, and proceed to reconsider it. If after such reconsideration two-thirds (⅔) of that House shall agree to pass the Bill, it shall be sent, with the objections, to the other House, by which, likewise, it shall be reconsidered; and if approved by two-thirds (⅔) of that House, it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the Governor within five (5) days (Sundays excepted) after it has been presented to him, it shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevented its return, in which case such Bill shall be a law unless the Governor shall veto it within fifteen (15) days (Sundays excepted) after it is presented to him, and such Bill shall be returned to the Legislature, with his objections, within three (3) days after the beginning of the next session of the Legislature.

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[1] Unless otherwise indicated all section numbers refer to sections of the Mississippi Constitution of 1890.

"In exercising the gubernatorial veto under Section 72, the Governor must veto the entire bill. There is no power to approve parts of a bill, while disapproving other parts.

"It is the opinion of this office that House Bill No. 1054 of the 2011 Regular Session is not an appropriation bill and, therefore, is not subject to partial veto under Section 73."

"In contrast, Section 73 authorizes the Governor to veto parts and approve parts of any 'appropriation bill':

"The governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law.

"The power to approve parts of a bill, while vetoing or disapproving other parts of the same bill, is expressly limited to appropriation bills and may not be exercised with regard to other legislation. An attempt to partially veto any bill other than an appropriation bill would be outside the authority granted to the Governor under the Mississippi Constitution and would be an impermissible infringement of the powers of the Legislature.

"The Mississippi Supreme Court in *Fordice v. Bryan,* 651 So. 2d 998 (Miss. 1995), a case involving the exercise of a partial veto, stated:

"Article IV, Section 73 of the Mississippi Constitution of 1890 states: 'The governor may veto *parts* of any *appropriation bill*, and approve parts of the same, and the portions approved shall be law.' Miss. Const. art. IV, Section 73 (emphasis added). Therefore, the Governor is entitled to exercise his Section 73 veto power upon 'parts' of 'appropriation' bills, and only upon 'parts' of 'appropriation' bills. The Governor may not exercise the Section 73 partial veto power on revenue raising bond bills.

"In order for the bills to be susceptible to the Governor's Section 73 partial veto power, they must fix a definite maximum amount, Section 63, and not continue to be in force withdrawing money from the state treasury longer than two months after the expiration of the fiscal year ending after the meeting of the legislature at its next regular session, Section 64. 651 So. 2d 998, 1000.

"Although there is no definition of 'appropriation bill' in the Mississippi Constitution, there are mandatory requirements for appropriation bills contained therein. Section 63, which requires an appropriation bill to state the maximum sum authorized to be drawn from the State Treasury, states:

"No appropriation bill shall be passed by the legislature which does not fix definitely the maximum sum thereby authorized to be drawn from the treasury.

"Section 64, which provides that bills making appropriations out of the State Treasury only be in force no more than two months after the expiration of the fiscal year, states:

"No bill passed after the adoption of this Constitution to make appropriations of money out of the state treasury shall continue in force more than two months after the expiration of the fiscal year ending after the meeting of the legislature at its next regular session; nor shall such bill be passed except by the votes of a majority of all members elected to each house of the legislature.

"Section 69 prescribes the contents of appropriation bills and prohibits the engrafting of other legislation therein and reads as follows:

"General appropriation bills shall contain only the appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds, and to support the common schools. All other appropriations shall be made by separate bills, each embracing but one subject. Legislation shall not be engrafted on the appropriation bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid.

"Section 68 provides that appropriation bills (and revenue bills) have precedence in the Legislature over all other business:

"Appropriation and revenue bills shall, at regular sessions of the legislature, have precedence in both houses over all other business, and no such bills shall be passed during the last five days of the session.

"Under the Joint Rules of the Senate and the House, appropriation bills and revenue bills are subject to deadlines during the legislative session which are different from other bills. See Joint Rule 40 (2011).

"In accordance with *Fordice v. Bryan, supra*, the validity of a partial veto under Section 73 depends on the nature of the bill itself, i.e., is House Bill No. 1054 an appropriation bill subject to partial veto under Section 73 or is it a general bill subject only to the general veto provisions of Section 72? If House Bill No. 1054 is not an appropriation bill, then it is not subject to partial veto under Section 73.

"To determine whether House Bill No. 1054 is an appropriation bill, it is necessary (1) to examine and compare its provisions with the constitutional sections which prescribe the mandatory provisions of an appropriations bill and (2) to examine the legislative process in which House Bill No. 1054 came to be enacted, i.e., was House Bill No. 1054 handled procedurally as an appropriation bill?

"House Bill No. 1054 contains no maximum amount which may be withdrawn from the Treasury as required by Section 63. House Bill No.1054 is not limited in duration to no more than two months after the expiration of the fiscal year as required by Section 64. Its contents are not limited to appropriations defraying the expenses of State government, paying interest on state bonds, and supporting the common schools as required by Section 69.

"In addition to not satisfying the constitutional requirements of appropriation bills, House Bill No. 1054 contains provisions commonly seen in general bills. For example, House Bill No. 1054 *inter alia* authorizes a half dozen transfers of funds making it similar to 'transfer bills' in previous legislative sessions, which were also treated procedurally by the Legislature as general bills. House Bill No. 1059, 2010 Regular Session and House Bill No. 1505, 2009 Regular Session. In addition, House Bill No. 1054 authorizes the borrowing of special funds to offset any temporary cash flow deficiency in the Health Care Expendable Fund. It provides that certain funds held for veterans by the State Veterans Home shall be considered to be held in a fiduciary capacity for the benefit of the veterans. House Bill No. 1054 also revises the time limit in which a resident of the coastal counties, whose residence was destroyed by Hurricane Katrina, must begin construction in order to not be required to meet current lot size requirements. These provisions are all similar in nature to other provisions commonly found in general bills.

"Section 2 of House Bill No. 1054, which was the subject of the Governor's veto message, reads as follows:

"On or before July 1 of each fiscal year, or at such other times as necessary, the Clerk of the House of Representatives or the Secretary of the Senate ('the Legislature') shall submit a request to the State Fiscal Officer for the funds necessary to pay (a) the expenses of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, (b) the state's share of various assessments from legislative-related organizations, and (c) any other legislative-related expenses. The State Fiscal Officer shall transfer to the Legislature the amount or amounts as requested by the Legislature from the Secretary of State's Fund No. 3111. The State Fiscal Officer shall transfer such obligated funds in a timely manner as determined by the Legislature. The Legislature is authorized to escalate the appropriate budgets during the fiscal year by the respective amounts transferred and to expend those sums for the purposes authorized by law.

"Briefly stated, Section 2 of House Bill No. 1054 authorizes the transfer of funds from the Secretary of State's Fund No. 3111[2], the escalation of the Legislature's budget by amounts transferred from Fund No. 3111, and the payment of legislative expenses specified therein.

"While Section 2 of House Bill No. 1054 authorizes the expenditure of public funds, it does not do so within the framework of an appropriation bill. Appropriation bills are not the exclusive legislative vehicle for authorizing the expenditure of public funds. As you note in your letter of request, the Department of Finance and Administration is authorized by Section 7-1-255 of the Mississippi Code, a general law provision, to escalate its budget based on application fees it receives. Similarly, the Department of Audit is authorized by Section 7-7-81 (2) of the Mississippi Code, another general law provision, to escalate its budget based on funds deposited in the 'Auditor's Enhanced Accountability Fund.' Upon each agency's respective budget being escalated, these Code sections authorize the Department of Finance and Administration and the Department of Audit to expend available funds. No further action of the Legislature is necessary. You list thirteen other examples of escalation and expenditure authority by general laws in your letter.[3]

"In addition, bond bills, specifically found not to be appropriation bills in *Fordice v. Bryan,* supra, and, therefore, not subject to partial veto, typically authorize the expenditure of public funds after bonds are issued without any further act of the Legislature. Similarly, legislation establishing revolving funds, though not appropriation bills, generally authorize the expenditure of public funds without any further act of the Legislature.

"The provisions in Section 2 of House Bill No. 1054 are similar to the general law escalation provisions mentioned above and the thirteen other general law examples referenced in your letter. Once the transfer of funds is made from Fund No. 3111 and the Legislature's budget is escalated, the Legislature is authorized to make expenditures from available funds.

"With regard to its procedural treatment by the Legislature, House Bill No. 1054 was not afforded the precedence and deadlines applicable to appropriation bills. Instead, House Bill No. 1054 was subject to the deadlines applicable to general bills. The 'transfer bills' in previous legislative sessions, referred to above, were also treated procedurally by the Legislature as general bills.

"All of the comparisons of the constitutional requirements for appropriation bills with the contents of House Bill No. 1054 and the legislative procedure employed for enactment indicate that House Bill No. 1054 is a general bill, not an appropriation bill. The Governor, in his veto message, acknowledged that House Bill No. 1054 is a general bill. However, he characterizes House Bill No. 1054 as a general bill which contains an appropriation in Section 2 and, therefore, is subject to a partial veto.

"We are unable to find any authority for the proposition that any bill which authorizes the expenditure of public funds is an appropriation bill for purposes of Section 73. On the contrary, it is clear under *Fordice v. Bryan, supra,* that a bill must meet the constitutional requirements set forth for appropriation bills in order to be subject to partial veto under Section 73. While the Governor was authorized to exercise his general veto authority under Section 72 with regard to House Bill No. 1054, he was not authorized to exercise his partial veto authority under Section 73. An unconstitutional attempt of a partial veto is a nullity. *See Fordice v. Bryan, supra, and State v. Holder*, 76 Miss. 158, 23 So. 643 (1898).

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[2] Fund No. 3111 contains special funds which are generated by fees earned by the Secretary of State and the Legislature appropriates funds therefrom for some of the operations of the Secretary of State's office.

[3] See Sections 17-17-63(3), 21-35-31 (2), 27-19-44.2(2), 27-19-179(2), 27-103-303(4), 31-913,33- 15-311(2),37-151-25,45-39-5(4), 57-1-303(1)(a), 57-75-15(4)(b)-(m), 57-75-15(18)(b), and 69-46-7(1) and (2) of the Mississippi Code.

"Conclusion

"It is the opinion of this office that House Bill No. 1054 of the 2011 Regular Session is not an appropriation bill and, therefore, is not subject to partial veto under Section 73."

§ 5-1-57. Legislative Extraordinary Session Expense Revolving Fund.

(1) There is created in the State Treasury a special fund to be known as the Legislative Extraordinary Session Expense Revolving Fund. This fund is established for the purpose of paying the salaries, mileage, daily expense allowance, retirement contributions, matching funds and any other expenses of the members of the Legislature that are incurred during any extraordinary session of the Legislature. All income from the investment of funds in the revolving fund shall be credited to the special fund, and any funds remaining in the revolving fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) The State Bond Commission shall grant noninterest bearing loans to the Legislative Extraordinary Session Expense Revolving Fund from the State Treasurer's General Fund/Special Fund Pool, upon the joint request of the Clerk of the House and the Secretary of the Senate, which loans shall be used to pay any expenses of the members of the Legislature that are incurred during any extraordinary session of the Legislature. The total amount of loans granted to the revolving fund during any fiscal year may not exceed One Million Dollars ($1,000,000.00).

(3) The Legislature shall repay the amount of any loan granted to the revolving fund within eighteen (18) months after the end of the extraordinary session for which the loan was requested. The repayment shall be made to the State Treasurer's General Fund/Special Fund Pool. The Legislature may request the amount of the repayment in its annual budget request to the Joint Legislative Budget Committee.

HISTORY: Laws, 2001, ch. 439, § 1 eff from and after July 1, 2001.

Editor's Notes — Laws of 2001, ch. 439, was House Bill 724, 2001 Regular Session, and originally passed the House of Representatives on January 30, 2001, and the Senate on February 28, 2001. The Governor vetoed House Bill 439 on March 12, 2001. The veto was overridden by both the House of Representatives and the Senate on March 14, 2001.

A prior § 5-1-57 [Codes, 1942, § 7218; Laws, 1936, ch. 175; Laws 1940, ch. 298; Laws 1948, ch. 406, § 1; Laws 1958, ch. 537; Laws 1968, ch. 562, § 2; Laws 1980, ch. 560, § 18; Laws 1983, ch. 504, § 1; Laws 1986, ch. 500, § 35], which permitted the secretary of the senate and the clerk of the house to work, and receive compensation for, one extra day after adjournment of the legislature to deal with unfinished business, was repealed by Laws of 1983, ch. 329, § 4, effective from and after passage (approved March 9, 1983).

§ 5-1-59. Renumeration of witnesses for state.

Witnesses on behalf of the state subpoenaed to appear before the legislature, or either branch thereof, or any committee authorized to send for witnesses, shall be allowed the same compensation for each day's attendance, and the same mileage allowed to witnesses in the circuit courts. The sum due to each witness shall be ascertained by his own affidavit before the secretary of the senate or clerk of the house of representatives or chairman of the committee before whom he was subpoenaed to appear, who shall give the witness a certificate thereof attaching the affidavit to the same. On production of such certificate the auditor shall issue his warrant on the treasurer therefor, payable out of the legislative appropriation.

HISTORY: Codes, Hutchinson's 1848, ch. 17, art. 8 (1); 1857, ch. 5, art. 13; 1871, § 338; 1880, § 190; 1892, § 2672; 1906, § 3032; Hemingway's 1917, § 5420; 1930, § 5354; 1942, § 3352.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 5-1-61. Joint convention; place and time of assemblage.

When by the constitution or laws a joint meeting of the senate and house of representatives is required, they shall assemble with their secretary and clerk in the hall of the house of representatives on the day and hour previously agreed on by a concurrent resolution or as fixed by law.

HISTORY: Codes, 1892, § 2674; 1906, § 3034; Hemingway's 1917, § 5422; 1930, § 5356; 1942, § 3354.

Cross References — Constitutional provision for choosing of state librarian, see Miss. Const. Art. 4, § 106.

§ 5-1-63. Joint convention; limitation on powers.

The joint convention, when assembled, shall not have power to perform any act other than that specified in the concurrent resolution calling the same or required by law.

HISTORY: Codes, 1892, § 2675; 1906, § 3035; Hemingway's 1917, § 5423; 1930, § 5357; 1942, § 3355.

§ 5-1-65. Joint convention; presiding officers and records.

When the two houses shall be assembled in joint convention the president of the senate shall preside, and the secretary of the senate and the clerk of the house of representatives shall each keep a perfect and complete record of the proceedings of the convention. On the re-assembling of the two houses in their respective halls, it shall be the duty of the secretary and clerk to report the same to their respective houses, and the same shall be entered at large upon their journals.

HISTORY: Codes, 1892, § 2676; 1906, § 3036; Hemingway's 1917, § 5424; 1930, § 5358; 1942, § 3356.

Cross References — Criminal disturbance of legislative bills and procedures, see §§ 97-7-49 et seq.

§ 5-1-67. Joint convention; rules.

The rules of the house of representatives and the joint rules of the two houses, as far as the same may be applicable, shall be the rules for the government of the joint convention.

HISTORY: Codes, 1892, § 2677; 1906, § 3037; Hemingway's 1917, § 5425; 1930, § 5359; 1942, § 3357.

§ 5-1-69. Joint convention; votes and elections.

All votes in the joint convention shall be taken by yeas and nays, and all elections shall be viva voce. In taking the same it shall be the duty of the secretary of the senate to call the names of the members of the senate, after which the clerk of the house of representatives shall in like manner call the names of the members of the house. Each member of the senate and house of representatives present shall be required to vote on all questions and in all elections in joint convention, unless excused by a vote of the convention.

HISTORY: Codes, 1892, § 2678; 1906, § 3038; Hemingway's 1917, § 5426; 1930, § 5360; 1942, § 3358.

§ 5-1-71. Joint convention; majority to elect.

The person who receives a majority of all the votes of the joint convention, a majority of all the members elected to both houses being present and voting, shall be duly elected. When more than one officer is to be elected the vote shall be so taken as to elect only one at a time.

HISTORY: Codes, 1892, § 2679; 1906, § 3039; Hemingway's 1917, § 5427; 1930, § 5361; 1942, § 3359.

§ 5-1-73. Joint convention; punishment of members.

Any member of either house who may be guilty of disorderly behavior in the presence of the joint convention, may be punished by the house of which he is a member in the same manner as if the offense were committed in the presence of his house.

HISTORY: Codes, 1892, § 2680; 1906, § 3040; Hemingway's 1917, § 5428; 1930, § 5362; 1942, § 3360.

§ 5-1-75. Joint convention; punishment of persons not members.

The joint convention shall have power to punish any person other than a member for disorderly or contemptuous behavior in its presence, by fine and imprisonment, in the same manner and to the same extent as either house may do for like conduct before it.

HISTORY: Codes, 1892, § 2681; 1906, § 3041; Hemingway's 1917, § 5429; 1930, § 5363; 1942, § 3361.

§ 5-1-77. Mail carrier and distributor for legislature.

There shall be a mail carrier and distributor for the legislature of the state, who shall be elected at the same time and by the same method as now provided for the election of state librarian, and whose term of office shall be for a period of four years.

HISTORY: Codes, 1930, § 5364; 1942, § 3362; Laws, 1922, ch. 292.

Cross References — Constitutional provision for choosing of state librarian, see Miss. Const. Art. 4, § 106.

§ 5-1-79. Repealed.

Repealed by Laws, 1983, ch. 329, § 4, eff from and after passage (approved March 9, 1983).

§ 5-1-79. [Codes, 1930, § 5365; 1942, § 3363; Laws, 1922, ch. 292]

Editor's Notes — Former § 5-1-79 prescribed the duties and compensation of the mail carrier and distributor for the state legislature.

§ 5-1-81. Location of post office.

The post office or place for distributing the mails and the depository for receiving the outgoing mails, shall be located on the second floor of the capitol, in the room to the left of the entrance, which was provided for such purpose in the plan of the state capitol building.

HISTORY: Codes, 1930, § 5366; 1942, § 3364; Laws, 1922, ch. 292.

§ 5-1-83. Capitol Commission to fit up post office.

The capitol commission as keeper of the capitol, is hereby authorized and directed to make such alterations and provide such furnishings for the post-office room as in its judgment may seem proper, to fit it for the convenience and necessary requirements of sections 5-1-79 and 5-1-81.

HISTORY: Codes, 1930, § 5367; 1942, § 3365; Laws, 1922, ch. 292.

Editor's Notes — Section 5-1-79, which prescribed the duties and compensation of the mail carrier and distributor for the state legislature, was repealed by Laws of 1983, ch. 329, § 4, effective from and after passage (approved March 9, 1983).

§ 5-1-85. Publication of fiscal note for certain bills or concurrent resolutions.

For any bill or concurrent resolution, the purpose or effect of which is to expend state funds or enable the spending of state funds, or to increase or decrease the revenue of the state, either directly or indirectly, that passes out of a committee for which a fiscal note was drafted, the fiscal note shall be published in electronic form on the Mississippi Legislature website on the web page that provides the bill text, description, background information, history of actions, amendments, and additional information for the bill within twenty-four (24) hours of passing out of committee. If a fiscal note was not drafted for any such bill or concurrent resolution, the statement "No fiscal note conducted" shall be included on the web page.

HISTORY: Laws, 2012, ch. 324, § 1, effective July 1, 2012.

Editor's Notes — A former § 5-1-85 [Codes, 1942, § 3828-02; Laws, 1944, ch 264, § 3; Laws 1954, ch 324, § 1; Repealed by Laws, 1983, ch. 329, § 4, effective from and after passage (approved March 9, 1983)] provided for the employment of legislative draftsmen by the state legislature.

CHAPTER 3.

LEGISLATIVE COMMITTEES

General Legislative Investigating Committee [Repealed].
Joint Legislative Committee on Performance Evaluation and Expenditure Review. 5-3-51
Special Joint Committee on Reapportionment. 5-3-81
Standing Joint Legislative Committee on Reapportionment. 5-3-91
Standing Joint Congressional Redistricting Committee. 5-3-121
Legislative Oversight Committee; Highway Refunding Bonds. 5-3-141
Environmental Protection Council. [Repealed].

GENERAL LEGISLATIVE INVESTIGATING COMMITTEE

Sec.
5-3-1 through 5-3-25. Repealed.
5-3-27 through 5-3-31. Repealed.

§§ 5-3-1 through 5-3-25. Repealed.

Repealed by Laws, 1973, ch. 331, § 12, eff from and after passage (approved March 19, 1973).

§ 5-3-1. [Codes, 1942, § 3365-01; Laws, 1946, ch. 281, § 1]

§ 5-3-3. [Codes, 1942, § 3365-02; Laws, 1946, ch. 281, § 2]

§ 5-3-5. [Codes, 1942, § 3365-03; Laws, 1946, ch. 281, § 3; Laws, 1960, ch. 388; Laws, 1962, ch. 494, § 1]

§ 5-3-7. [Codes, 1942, § 3365-04; Laws, 1946, ch. 281, § 4]

§ 5-3-9. [Codes, 1942, § 3365-09; Laws, 1946, ch. 281, § 9]

§ 5-3-11. [Codes, 1942, § 3365-10; Laws, 1946, ch. 281, § 10]

§ 5-3-13. [Codes, 1942, § 3365-05; Laws, 1946, ch. 281, § 5]

§ 5-3-15. [Codes, 1942, § 3365-07; Laws, 1946, ch. 281, § 7; Laws, 1962, ch. 494, § 2]

§ 5-3-17. [Codes, 1942, § 3365-06; Laws, 1946, ch. 281, § 6]

§ 5-3-19. [Codes, 1942, § 3365-08; Laws, 1946 ch. 281, § 8]

§ 5-3-21. [Codes, 1942, § 3365-11; Laws, 1946, ch. 281, § 11; Laws, 1958, ch. 472; Laws, 1964, ch. 493]

§ 5-3-23. [Codes, 1942, § 3365-12; Laws, 1946, ch. 281, § 12; Laws, 1960, ch. 387]

§ 5-3-25. [Codes, 1942, § 3365-13; Laws, 1946, ch. 281, § 13]

Editor's Notes — Former § 5-3-1 created the General Legislative Investigating Committee and prescribed its membership and organization.

Former § 5-3-3 required the General Legislative Investigating Committee to keep minutes and records of its proceedings.

Former § 5-3-5 prescribed the powers of the General Legislative Investigating Committee.

Former § 5-3-7 granted the General Legislative Investigating Committee authority to investigate purchases of equipment and supplies by counties.

Former § 5-3-9 authorized the General Legislative Investigating Committee to employ counsel and other help.

Former § 5-3-11 authorized the General Legislative Investigating Committee to examine books and documents, to require production of books and records, and to impose a penalty for noncompliance.

Former § 5-3-13 empowered the General Legislative Investigating Committee to subpoena and examine witnesses.

Former § 5-3-15 permitted the General Legislative Investigating Committee to apply to chancery court for issuance of judicial process.

Former § 5-3-17 provided for the swearing of witnesses before the General Legislative Investigating Committee and for prosecution of such witnesses for perjury or contempt.

Former § 5-3-19 granted witnesses before the General Legislative Investigating Committee immunity from prosecution related to required testimony.

Former § 5-3-21 provided for compensation of members of the General Legislative Investigating Committee and for witness fees.

Former § 5-3-23 provided for the means of payment of expenses of the General Legislative Investigating Committee.

Former § 5-3-25 prescribed reports required to be made by the General Legislative Investigating Committee.

§§ 5-3-27 through 5-3-31. Repealed.

Repealed by Laws of 2017, ch. 402, § 16, effective July 1, 2017.

§ 5-3-27. [Laws, 1950, ch. 463, § 1, eff from and after passage (approved April 12, 1950).]

§ 5-3-29. [Laws, 1950, ch. 463, § 2, eff from and after passage (approved April 12, 1950).]

§ 5-3-31. [Laws, 1950, ch. 463, § 3, eff from and after passage (approved April 12, 1950).]

Editor's Notes — Former § 5-3-27 required the General Legislative Investigation Committee to study un-American activities in the state.

Former § 5-3-29 defined un-American activities.

Former § 5-3-31 provided that if a legislative council was set up by law with the jurisdiction of the General Legislative Investigating Committee, it would be the duty of the council to comply with the provisions of §§ 5-3-27 through 5-3-31.

JOINT LEGISLATIVE COMMITTEE ON PERFORMANCE EVALUATION AND EXPENDITURE REVIEW

Sec.	
5-3-51.	Creation of committee; general purpose.
5-3-53.	Definitions.
5-3-55.	Membership and organization of committee.
5-3-57.	Powers of committee.
5-3-59.	Subpoena and examination of witnesses.
5-3-61.	Issuance of performance evaluation and expenditure review reports.
5-3-63.	Recording testimony under oath.
5-3-65.	Legal assistance; other employees.
5-3-67.	Compensation and expenses.
5-3-69.	Quorum; meetings.
5-3-71.	Committee to evaluate executive branch of state government; reports.

Sec.
5-3-72. Committee to biennially evaluate procurement process used by state agencies; report.
5-3-73. Federal unfunded mandates; short title.
5-3-75, 5–3–77. Reserved.
5-3-79. Federal unfunded mandates; evaluation of implementation and cost of current mandates.

§ 5-3-51. Creation of committee; general purpose.

A committee of the senate and house of representatives to be known as a joint legislative committee on performance evaluation and expenditure review, (hereinafter committee), is hereby created for the purpose of conducting performance evaluations, investigations and examinations of expenditures and all records, relating thereto, of any agency at any time as the committee deems necessary. Provided further the committee shall perform a complete audit of all funds expended by the highway department. The committee shall submit its findings, conclusions and reports to the Mississippi legislature no later than the first day of the second full week of each regular session of the legislature.

HISTORY: Laws, 1973, ch. 331, § 1, eff from and after passage (approved March 19, 1973).

Cross References — Constitutional provision authorizing legislative investigations, see Miss. Const. Art. 4, § 60.

RESEARCH REFERENCES

Am. Jur.

72 Am. Jur. 2d, States, Territories, and Dependencies §§ 36 et seq.

CJS.

81A C.J.S., States §§ 169, 170.

§ 5-3-53. Definitions.

For purposes of Sections 5-3-51 through 5-3-69, the following words and phrases have the following meanings unless the context otherwise requires:

(a) "Performance evaluation" shall mean an examination of the effectiveness of the administration, its sufficiency and its adequacy in terms of the programs of the agency authorized by law to be performed. Such examinations shall include, but not be limited to:

(1) How effectively the programs are administered.

(2) Benefits of each program in relation to the expenditures.

(3) Goals of programs.

(4) Development of indicators by which the success or failure of a program may be gauged.

(5) Review conformity of programs with legislative intent.

(6) Assist interim committee dealing with specific programs.

(7) Impact of federal grant-in-aid programs on agency programs.

(b) "Agency" shall mean an agency, department, bureau, division, authority, commission, office or institution, educational or otherwise, of the State of Mississippi, or any political subdivision thereof which shall include all county governments and agencies thereof, all city governments and agencies thereof, and all public school districts and agencies thereof.

(c) "Expenditure review" shall mean an examination made at some point after the completion of a transaction or group of transactions.

HISTORY: Laws, 1973, ch. 331, § 2, eff from and after passage (approved March 19, 1973).

§ 5-3-55. Membership and organization of committee.

The committee shall be composed of seven (7) members from the Senate and seven (7) members from the House of Representatives, one (1) from each of the congressional districts of the State of Mississippi as they currently exist and three (3) from the state at large, to be appointed by the Lieutenant Governor and the Speaker of the House of Representatives for a term concurrent with their term in their respective house. For the remainder of the present term, the Lieutenant Governor and Speaker shall make their respective appointments within fifteen (15) days after sine die adjournment of the 2004 Regular Session; and for each full four-year term thereafter, the Lieutenant Governor and Speaker shall make their appointments within fifteen (15) days after the first calendar day of the regular session in the first year of such four-year term. The term of each member shall be concurrent with his term of office.

The committee shall meet no later than ten (10) days after the final day of the 2004 Regular Session, and annually thereafter, for the purpose of organizing by electing from the membership a chairman, vice chairman and secretary.

HISTORY: Laws, 1973, ch. 331, § 3; Laws, 2004, ch. 356, § 1, eff from and after passage (approved Apr. 20, 2004).

§ 5-3-57. Powers of committee.

The committee shall have the following powers:

(a) To conduct, in any manner and at any time deemed appropriate, a performance evaluation of all agencies. It may examine or investigate the budget, files, financial statements, records, documents or other papers of the agency deemed necessary by the committee.

(b) To conduct, in any manner and at any time deemed appropriate, a review of the budget, files, financial statements, records, documents or other papers, as deemed necessary by the committee, of any agency; to make selected review of any funds expended and programs previously projected by such agency; to investigate any and all salaries, fees, obligations, loans, contracts, or other agreements or other fiscal function or activity of any official or employee thereof (including independent contractors where necessary); and to do any and all things necessary and incidental to the purposes specifically set forth in this section.

(c) To conduct an investigation of all agencies which are in whole or in part operated or supported by any appropriation or grant of state funds, or which are in whole or in part supported or operated by any funds derived from any state-wide tax, license fee, or permit fee or which collects or administers any state-wide tax, license fee, or permit fee by whatever name called; such committee shall also have full and complete authority to investigate all laws administered and enforced by any such offices, departments, agencies, institutions and instrumentalities, and the manner and method of the administration and enforcement of such laws; to investigate any evasion of any state-wide tax, privilege fee or license fee; to investigate all disbursements of public funds by any office, agency, department, institution or instrumentality specified herein; to study the present laws relative to such agencies, offices, departments, institutions and instrumentalities, and the laws providing for the levying or imposition and collection of any state tax, privilege fee or license fee; to make recommendations to the legislature as to the correction of any imperfections, inequalities or injustices found to exist in any of such laws, and to do any and all things necessary and incidental to the purposes herein specifically set forth. Provided further that the committee shall upon petition by one-half the elected membership of either the Senate or House of Representatives perform a complete investigation and audit of any agency, entity or group subject to investigation or audit by passage of Sections 5-3-51 through 5-3-69.

(d) The committee, in its discretion, if it determines that such action is necessary to carry out the responsibilities of Sections 5-3-51 through 5-3-69, may employ an attorney or attorneys to file or assist the attorney general's office in filing actions for the recovery of any funds discovered to have been misused or misappropriated and to prosecute or assist in prosecution of criminal violations, if any, revealed or discovered in the discharging of their duties and responsibilities.

HISTORY: Laws, 1973, ch. 331, § 4, eff from and after passage (approved March 19, 1973).

Cross References — Authority of committee to perform random actuarial evaluations of funds and expenses of the Public Employees' Retirement System, see § 25-11-101.

OPINIONS OF THE ATTORNEY GENERAL

Magnolia Venture Capital Corporation is subject to oversight and review by state agencies. For instance, the joint legislative committee on Performance Evaluation and Expenditure Review and the State Auditor would have oversight and investigative jurisdictions over the activities of Magnolia Capital Corporation and the Magnolia Venture Capital Fund Limited Partnership. See Sections 5-3-57(e) and 7-7-211(f). Williams, December 20, 1996, A.G. Op. #96-0834.

§ 5-3-59. Subpoena and examination of witnesses.

The committee, while in the discharge of official duties, shall have the following additional powers:

(a) To subpoena and examine witnesses; to require the appearance of any person and the production of any paper or document; to order the appearance of any person for the purpose of producing any paper or document; and to issue all process necessary to compel such appearance or production. When such process has been served, the committee may compel obedience thereto by the attachment of the person, papers or records subpoenaed; and if any person shall wilfully refuse to appear before such committee or to produce any paper or record in obedience to any process issued by the committee and served on that person, he shall be guilty of contempt of the legislature and shall be prosecuted and punished as provided by law.

(b) To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee deems the administration of an oath necessary and advisable as provided by law.

(c) To determine that a witness has perjured himself by testifying falsely before the committee, and to institute penal proceedings as provided by law.

HISTORY: Laws, 1973, ch. 331, § 5, eff from and after passage (approved March 19, 1973).

Cross References — Wilful and corrupt swearing, see § 97-9-59.
Witness testifying in trial of crimes against legislative power, see § 99-17-31.

RESEARCH REFERENCES

ALR.
Testimony of witness as basis of civil action for damages. 54 A.L.R.2d 1298.

§ 5-3-61. Issuance of performance evaluation and expenditure review reports.

The committee shall issue performance evaluation reports and expenditure review reports, favorable or unfavorable, of any agency examined, and such reports shall be a public record. A copy of the report, signed by the chairman of the committee, including committee recommendations, shall be submitted to the governor, to each member of the legislature, and to the official, officer, or person in charge of the agency examined.

HISTORY: Laws, 1973, ch. 331, § 6, eff from and after passage (approved March 19, 1973).

§ 5-3-63. Recording testimony under oath.

Whenever making a performance evaluation or an expenditure review, the committee may require that testimony be given under oath, which may be administered by the chairman or by any person authorized by law to administer oaths, and may require that such testimony be recorded by an official court reporter or deputy, or by some other competent person, under oath, which report, when written and certified and approved by such person as being the direct transcript of the testimony, proceedings, or documents, expenditure review or performance evaluation, shall be prima facie a correct statement of said testimony, proceedings or documents, provided that such person's signature to such certificate be duly acknowledged by him before a notary public or some judicial official of this state.

HISTORY: Laws, 1973, ch. 331, § 7, eff from and after passage (approved March 19, 1973).

§ 5-3-65. Legal assistance; other employees.

The attorney general, or a designated assistant attorney general, appointed by him, the state auditor and the director of the state department of audit shall assist the committee in whatever manner the committee deems that such officers can be helpful. Furthermore, the committee is authorized to employ one full time secretary, other stenographic help, technical experts, auditors, investigators and other employees which may be necessary to enable it to carry out the provisions therein. The committee is authorized at its discretion to fix reasonable compensation for its employees including necessary travel expenses; and it shall maintain and provide a full, complete and itemized record of all such expenditures.

HISTORY: Laws, 1973, ch. 331, § 8, eff from and after passage (approved March 19, 1973).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 5-3-67. Compensation and expenses.

Members of the committee shall serve without compensation, provided that they shall be entitled to per diem compensation as is authorized by Section 25-3-69 for each day occupied with the discharge of official duties as members of the committee plus the expense allowance equal to the maximum daily expense rate allowable to employees of the federal government for travel in the high rate geographical area of Jackson, Mississippi, as may be established by federal regulations, per day, including mileage as authorized by Section 25-3-41. However, no committee member shall be authorized to receive reimbursement for expenses, including mileage, or per diem compensation unless such authorization appears in the minutes of the committee and is signed by the chairman or vice chairman. The members of the committee shall not receive per diem or expenses while the Legislature is in session. However, members may receive the per diem and expenses authorized by this section when the Legislature is in session but in recess under the terms of a concurrent resolution, or in recess during an extraordinary session. All expenses incurred by and on behalf of the committee shall be paid from a sum to be provided in equal portion from the contingency funds of the Senate and House of Representatives.

The committee staff and employees or contract organizations employed by the committee may continue at the discretion of the committee any investigations, audits or performance evaluation during the time the Legislature is in session.

HISTORY: Laws, 1973, ch. 331, § 9; Laws, 1980, ch. 560, § 3; Laws, 1988, ch. 314, § 1; Laws, 2009, ch. 483, § 4, eff from and after passage (approved Apr. 3, 2009).

Cross References — Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 5-3-69. Quorum; meetings.

There shall be no business transacted, including adoption of rules or procedure, without the presence of a quorum of the committee, which shall be eight (8) members to consist of four (4) members from the Senate and four (4) members from the House of Representatives, and no action shall be valid unless approved by the majority of those members present and voting, and entered upon the minutes of the committee and signed by the chairman and vice chairman. All actions of the committee shall be approved by at least four (4) Senate members and four (4) House members.

The committee shall meet at the time and place as designated by the majority vote of the members, provided that a special meeting may be called by the chairman or by a petition signed by no less than five (5) members. No action taken by the committee at any special meeting shall be valid unless each member shall have been given at least forty-eight hours' notice of the meeting, along with a statement of the business to be considered, and unless such action be entered upon the minutes of the committee and signed by the chairman.

HISTORY: Laws, 1973, ch. 331, § 10; Laws, 2004, ch. 356, § 2, eff from and after passage (approved Apr. 20, 2004).

§ 5-3-71. Committee to evaluate executive branch of state government; reports.

(1) The Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) shall evaluate the economy, efficiency and effectiveness of the executive branch of state government as it is affected by the

implementation of "the Mississippi Executive Reorganization Act of 1989 [Chapter 544, Laws of 1989]."

(2) On October 1, 1989, the Fiscal Management Board or its successor shall report to PEER the following information:

(a) A listing of all agencies in the executive branch of state government before and after the reorganization, regardless of whether they are affected by "the Mississippi Executive Reorganization Act of 1989";

(b) A description of the number, organizational location, and cost savings associated with employment positions eliminated as a direct result of the passage of "the Mississippi Executive Reorganization Act of 1989";

(c) A complete accounting of all projected or actual costs or savings associated with reorganization, including transition costs;

(d) Performance measures that can be used to determine the effectiveness of each program affected by the reorganization prior to and following the implementation of "the Mississippi Executive Reorganization Act of 1989", which may be the same as performance measures developed for purposes of preparing program budgets; and

(e) Administrative changes or other provisions that have been made to improve the delivery of services. Upon receipt of this report, the PEER Committee shall conduct a hearing or hearings to assist it in evaluating the initial impact of the implementation of "the Mississippi Executive Reorganization Act of 1989".

(3) On February 1, 1990, PEER shall report to the Legislature on the initial impact of the reorganization provided for in "the Mississippi Executive Reorganization Act of 1989".

(4) On October 1, 1990, the Fiscal Management Board or its successor shall report to PEER any changes in the information presented in the report required in Subsection (2) of this section. Upon receipt of this report, the PEER Committee shall conduct a hearing or hearings to assist it in evaluating the final impact of the implementation of "the Mississippi Executive Reorganization Act of 1989".

(5) On February 1, 1991, PEER shall report to the Legislature the final evaluation of the economy, efficiency and effectiveness of the executive branch of state government as it is affected by the implementation of "the Mississippi Executive Reorganization Act of 1989".

HISTORY: Laws, 1989, ch. 544, § 167, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

The Mississippi Executive Reorganization Act of 1989, referred to in this section, was enacted by Chapter 544, Laws of 1989, effective from and after July 1, 1989.

§ 5-3-72. Committee to biennially evaluate procurement process used by state agencies; report.

The Joint Committee on Performance Evaluation and Expenditure Review (PEER) shall evaluate on a biennial basis the procurement process utilized by all state agencies, including, but not limited to, the contract review, reporting and recordkeeping requirements in Section 25-9-120, and the bid requirements in Section 31-7-13. Upon completion of its evaluation, the PEER Committee shall submit a report to the Legislature with recommendations for improving the procurement process. The Department of Finance and Administration and the Personal Service Contract Review Board shall cooperate with the PEER Committee to carry out the provisions of this section.

HISTORY: Laws, 2015, ch. 431, § 2, eff from and after July 1, 2015.

§ 5-3-73. Federal unfunded mandates; short title.

This section and Section 5-3-79 shall be known and may be cited as the "Federal Unfunded Mandates Act."

HISTORY: Laws, 1995, ch. 428, § 1, eff from and after passage (approved March 15, 1995).

§§ 5-3-75, 5–3–77. Reserved.

§ 5-3-79. Federal unfunded mandates; evaluation of implementation and cost of current mandates.

Before December 1, 1996, the Joint Legislative Committee on Performance Evaluation and Expenditure Review shall complete an assessment of the implementation and cost of current federal mandates. In its evaluation, the committee shall consider the relationship between the requirements and implementation of the federal mandates and state policy. In addition, the evaluation shall identify those federal mandates that the committee believes are encroaching on the state's authority under the Tenth Amendment.

HISTORY: Laws, 1995, ch. 428, § 2, eff from and after passage (approved March 15, 1995).

SPECIAL JOINT COMMITTEE ON REAPPORTIONMENT

Sec.
5-3-81. Special joint committee on reapportionment.

§ 5-3-81. Special joint committee on reapportionment.

(1) The special joint committee on reapportionment, created in the first extraordinary session of the Mississippi Legislature in 1977, is hereby directed to establish a program whereby the State of Mississippi shall cooperate with the bureau of the census, United States Department of Commerce, to obtain 1980 census population data by individual block counts or, in the alternative, to establish any program of census population counts offered by the bureau of the census which, in the determination of the joint committee, is more feasible

than the block population counts program for the purpose of facilitating apportionment of representative public bodies in the State of Mississippi.

(2) The joint committee may, in its discretion, submit to the bureau of the census, United States Department of Commerce, a statement or letter of intent that the State of Mississippi does intend to participate in the "Delineation of Enumeration Districts by Local Authorities for Use in the 1980 Census" program upon a determination that such program is appropriate for use in Mississippi for population counting in each decennial census as a means of facilitating any necessary reapportionment of representative public bodies.

(3) The boards of supervisors of the counties within this state are hereby directed to submit on or before September 1, 1977, election district maps drawn pursuant to the metes and bounds requirements of Section 23-5-13, Mississippi Code of 1972, to the special joint committee on reapportionment. The boards of supervisors shall also, within ten (10) days after a request by the special joint committee on reapportionment, furnish such other information, graphic data and material as the joint committee shall require. The election commission, circuit clerks and chancery clerks of each county and the governing authorities of any governmental unit are hereby specifically empowered and directed to cooperate with the board of supervisors and the joint committee in the same manner upon request of the board and/or the joint committee.

(4) The joint committee shall submit a report of its actions, findings and recommendations and a statement of action necessary to implement the recommendations to the next succeeding regular or extraordinary session of the Mississippi Legislature.

HISTORY: Laws, 1977, 1st Ex Sess, ch. 3, § 1, eff from and after passage (approved August 13, 1977).

Editor's Notes — Section 23-5-13, referred to in subsection (3) of this section, was repealed by Laws of 1986, ch. 495, § 335, effective from and after January 1, 1987.

Cross References — Standing joint legislative committee on reapportionment, see § 5-3-91 et seq.

Standing joint congressional redistricting committee, see § 5-3-121 et seq.

STANDING JOINT LEGISLATIVE COMMITTEE ON REAPPORTIONMENT

Sec.	
5-3-91.	Standing joint legislative committee on reapportionment; membership; organization.
5-3-93.	Committee to draw plan to apportion Mississippi Legislature.
5-3-95.	Per diem compensation; expenses and mileage.
5-3-97.	State agencies and entities to cooperate with committee; employment of experts and other staff.
5-3-99.	Procedure for determining norm to be represented by senators and representatives.
5-3-101.	Guidelines and standards for apportionment.
5-3-103.	Submission of apportionment plans to legislature.

§ 5-3-91. Standing joint legislative committee on reapportionment; membership; organization.

There is hereby created the standing joint legislative committee on reapportionment, to be composed of the chairman and vice chairman of the apportionment and elections committee of the house of representatives and the chairman and vice chairman of the elections committee of the senate; ten (10) members of the house of representatives, two (2) from each congressional district, to be appointed by the speaker of the house of representatives; and ten (10) members of the senate, two (2) from each congressional district to be appointed by the lieutenant governor. In the event the congressional districts of the state shall change numerically, then the number appointed from the senate and appointed from the house by congressional districts shall be adjusted accordingly. The members shall serve until the end of the term of office for which such member has been elected.

The lieutenant governor and speaker of the house of representatives shall call an organizational meeting of the committee and the committee shall elect a chairman and such other officers as they deem necessary. A majority vote of the members of each house shall be required on all votes by the committee.

HISTORY: Laws, 1977, 2d Ex Sess, ch. 23, § 1(1); Laws, 1981, ch. 304, § 1, eff from and after passage (approved February 2, 1981).

Cross References — Constitutional provision as to apportionment of the state senate and house of representatives, see Miss. Const. Art. 13, § 254.

Apportionment of state representatives, see § 5-1-1.

Apportionment of state senators, see § 5-1-3.

Special joint committee on reapportionment, see § 5-3-81.

Standing joint congressional redistricting committee, see § 5-3-121 et seq.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. 2d, Elections §§ 8, 37, 22 et seq.

CJS.

29 C.J.S., Elections §§ 136–139.

§ 5-3-93. Committee to draw plan to apportion Mississippi Legislature.

The members of the committee shall draw a plan to apportion, according to constitutional standards, the membership of the Mississippi Senate and the Mississippi House of Representatives no later than fifteen (15) days prior to the scheduled adjournment of the next regular session of the Legislature following the delivery of the 2000 decennial census data to the state and every ten (10) years thereafter and at such other times as they may be directed by joint resolution of the Mississippi Legislature.

Provided, however, the committee shall not be required to present a plan to the Legislature prior to four (4) months after the publication of census data.

HISTORY: Laws, 1977, 2d Ex Sess, ch. 23, § 1(2); Laws, 1981, ch. 304, § 1;

Laws, 2001, ch. 504, § 1, eff from and after May 9, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated May 9, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws, 2001, ch. 504, § 1.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Elections §§ 8, 37, 22 et seq.

CJS.
29 C.J.S., Elections §§ 136–139.

§ 5-3-95. Per diem compensation; expenses and mileage.

(1) The members of the committee shall be entitled to receive compensation as follows:

(a) Per diem compensation for each day engaged in the discharge of official duties at the same rate as compensated during a special session of the Legislature and reimbursement for all actual, necessary expenses incurred in the discharge of official duties, including mileage as authorized by law; or

(b) Per diem compensation for each day engaged in the discharge of official duties in the amount authorized by Section 25-3-69 and a mileage allowance and an expense allowance in the amount authorized by Section 5-1-47.

(2) Prior to receiving any compensation pursuant to subsection (1) of this section, a member of the committee shall give notice in writing to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, of the manner in which he desires to be compensated pursuant to subsection (1) of this section.

(3) No compensation shall be paid pursuant to this section for attending meetings of the committee while the Legislature is in session.

HISTORY: Laws, 1977, 2d Ex Sess, ch 23, § 1(3); Laws, 1981, ch. 304, § 1; Laws, 2001, ch. 504, § 2, eff from and after May 9, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated May 9, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws, 2001, ch. 504, § 2.

Cross References — Compensation of legislators during special sessions, see § 5-1-41.

Compensation, mileage and expenses of the standing joint congressional redistricting committee, see § 5-3-125.

Traveling expenses of state officers and employees, see § 25-3-41.

Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 5-3-97. State agencies and entities to cooperate with committee; employment of experts and other staff.

All political subdivisions, state agencies, and all other creatures of the state of Mississippi are hereby authorized and directed to assist the committee and to provide it with such professional, technical, and other expertise as each may possess when requested so to do. After an affirmative finding that professional, technical, or other expertise is needed that cannot be provided by the aforesaid political subdivisions, state agencies, and other creatures of the state, then the committee may employ or contract for such professional, technical, or other expertise necessary to accomplish the apportionment. The committee may employ staff personnel as it deems necessary.

HISTORY: Laws, 1977, 2d Ex Sess, ch 23, § 1(4); Laws, 1981, ch. 304, § 1, eff from and after passage (approved February 2, 1981).

§ 5-3-99. Procedure for determining norm to be represented by senators and representatives.

(1) The committee shall divide the number of members of the senate that it recommends within constitutional limitations into the total population of the state as reported in each census to determine the number of persons which constitutes the norm to be represented by a senator.

(2) The committee shall divide the number of members of the house of representatives that it recommends within constitutional limitations into the total population of the state as reported in each census to determine the number of persons which constitutes the norm to be represented by a representative.

HISTORY: Laws, 1977, 2d Ex Sess, ch 23, § 2; Laws, 1981, ch. 304, § 1, eff from and after passage (approved February 2, 1981).

§ 5-3-101. Guidelines and standards for apportionment.

In accomplishing the apportionment, the committee shall follow such constitutional standards as may apply at the time of the apportionment and shall observe the following guidelines unless such guidelines are inconsistent with constitutional standards at the time of the apportionment, in which event the constitutional standards shall control:

(a) Every district shall be compact and composed of contiguous territory and the boundary shall cross governmental or political boundaries the least number of times possible; and

(b) Districts shall be structured, as far as possible and within constitutional standards, along county lines; if county lines are fractured, then election district lines shall be followed as nearly as possible.

HISTORY: Laws, 1977, 2d Ex Sess, § 3; Laws, 1981, ch. 304, § 1, eff from and after passage (approved February 2, 1981).

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Elections §§ 8, 37, 22 et seq.

CJS.
29 C.J.S., Elections §§ 136–139.

§ 5-3-103. Submission of apportionment plans to legislature.

Upon completion of apportionment plans, the committee shall present its plans to the Mississippi Legislature, which shall act on the plans not later than the next regular session of the legislature. The committees to which the plans are referred shall report their recommendations to their respective houses no later than the forty-fifth day of the legislative session.

HISTORY: Laws, 1977, 2d Ex Sess, ch. 23, § 4; Laws, 1981, ch. 304, § 1, eff from and after passage (approved February 2, 1981).

STANDING JOINT CONGRESSIONAL REDISTRICTING COMMITTEE

Sec.

5-3-121.	Standing joint congressional redistricting committee; membership and organization.
5-3-123.	Preparation of plan to redistrict congressional districts.
5-3-125.	Per diem compensation; reimbursement for expenses and mileage.
5-3-127.	Cooperation with other state agencies; employment of experts; other employees.
5-3-129.	Submission of plan to governor and legislature.

§ 5-3-121. Standing joint congressional redistricting committee; membership and organization.

There is hereby created a standing joint congressional redistricting committee, to be composed of the chairman and vice chairman of the apportionment and elections committee of the house of representatives and the chairman and vice chairman of the elections committee of the senate; ten (10) members of the house of representatives, two (2) from each congressional district, to be appointed by the speaker of the house of representatives; and ten (10) members of the senate, two (2) from each congressional district, to be appointed by the lieutenant governor. In the event the congressional districts of the state shall change numerically, then the number appointed from the senate and from the house from congressional districts shall be adjusted accordingly. The members shall serve until the end of the term of office for which such member has been elected.

The lieutenant governor and speaker of the house of representatives shall call an organizational meeting of the committee and the committee shall elect a chairman and such other officers as they deem necessary. A majority vote of the members of each house shall be required on all votes by the committee.

HISTORY: Laws, 1981, ch. 302, § 1 subd (1), eff from and after passage (approved January 30, 1981).

Cross References — Special joint committee on reapportionment, see § 5-3-81.
Standing joint legislative committee on reapportionment, see § 5-3-91 et seq.

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Elections §§ 8, 37, 22 et seq.

CJS.
29 C.J.S., Elections §§ 136–139.

§ 5-3-123. Preparation of plan to redistrict congressional districts.

The members of the committee shall draw a plan to redistrict, according to constitutional standards, the United States congressional districts for the state of Mississippi no later than thirty (30) days preceding the convening of the next regular session of the legislature after the results of the 1980 decennial census are published and every ten (10) years thereafter.

Provided, however, the committee shall not be required to present a plan to the governor and to the legislature prior to four (4) months after the publication of census data.

HISTORY: Laws, 1981, ch. 302, § 1 subd (2), eff from and after passage (approved January 30, 1981).

JUDICIAL DECISIONS

1. State Legislature responsible for redistricting.
Chancery court did not have jurisdiction to adopt a congressional redistricting plan after the State Legislature failed to perform its statutorily mandated duty to do so; pursuant to state law, the State Legislature was the only state governmental entity authorized to draw new congressional districts, which then had to be precleared under federal voting law before they could be implemented, and any state court at most only had the authority to assist the State Legislature in such a matter. Mauldin v. Branch, 866 So. 2d 429, 2003 Miss. LEXIS 849 (Miss. 2003).

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Elections §§ 8, 37, 22 et seq.

CJS.
29 C.J.S., Elections §§ 136–139.

§ 5-3-125. Per diem compensation; reimbursement for expenses and mileage.

(1) The members of the committee shall be entitled to receive compensation as follows:

(a) Per diem compensation for each day engaged in the discharge of official duties at the same rate as compensated during a special session of the

Legislature and reimbursement for all actual, necessary expenses incurred in the discharge of official duties, including mileage as authorized by law; or

(b) Per diem compensation for each day engaged in the discharge of official duties in the amount authorized by Section 25-3-69 and a mileage allowance and an expense allowance in the amount authorized by Section 5-1-47.

(2) Prior to receiving any compensation pursuant to subsection (1) of this section, a member of the committee shall give notice in writing to the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, of the manner in which he desires to be compensated pursuant to subsection (1) of this section.

(3) No compensation shall be paid pursuant to this section for attending meetings of the committee while the Legislature is in session.

HISTORY: Laws, 1981, ch. 302, § 1 subd (3); Laws, 2001, ch. 504, § 3, eff from and after May 9, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated May 9, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws, 2001, ch. 504, § 3.

Cross References — Compensation of legislators during special sessions, see § 5-1-41.

Compensation, mileage and expenses of the standing joint legislative committee on reapportionment, see § 5-3-95.

Traveling expenses of state officers and employees, see § 25-3-41.

Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 5-3-127. Cooperation with other state agencies; employment of experts; other employees.

All political subdivisions, state agencies, and all other creatures of the state of Mississippi are hereby authorized and directed to assist the committee and to provide it with such professional, technical and other expertise as each may possess when requested so to do. After an affirmative finding that professional, technical or other expertise is needed that cannot be provided by the aforesaid political subdivisions, state agencies, and other creatures of the state, then the committee may employ or contract for such professional, technical or other expertise necessary to accomplish the apportionment. The committee may employ staff personnel as it deems necessary.

HISTORY: Laws, 1981, ch. 302, § 1 subd (4), eff from and after passage (approved January 30, 1981).

JUDICIAL DECISIONS

1. State court's role in redistricting.

Chancery court did not have jurisdiction to adopt a congressional redistricting plan after the State Legislature failed to perform its statutorily mandated duty to do so; the State Legislature was the only state governmental entity authorized under state law to draw new congressional districts, which then had to be precleared pursuant to federal voting law before they could be implemented and any state court at most only had the authority to assist the State Legislature in such a matter. Mauldin v. Branch, 866 So. 2d 429, 2003 Miss. LEXIS 849 (Miss. 2003).

§ 5-3-129. Submission of plan to governor and legislature.

Upon completion of a redistricting plan, the committee shall present its plan to the governor and to the Mississippi legislature.

HISTORY: Laws, 1981, ch. 302, § 2, eff from and after passage (approved January 30, 1981).

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Elections §§ 8, 37, 22 et seq.

CJS.
29 C.J.S., Elections §§ 136–139.

LEGISLATIVE OVERSIGHT COMMITTEE; HIGHWAY REFUNDING BONDS

Sec.
5-3-141. Membership; authority; expenses.

§ 5-3-141. Membership; authority; expenses.

There is hereby created the Mississippi Legislative Oversight Committee. Such oversight committee shall consist of three (3) representatives appointed by the Speaker of the House of Representatives and three (3) senators appointed by the Lieutenant Governor, and they shall be appointed within ten (10) days after April 4, 1985. The legislative oversight committee shall serve in an advisory capacity to the State Bond Commission in connection with the issuance of refunding bonds under Laws, 1985, Chapter 469, Sections 1-3, and the legislative members thereof shall report the actions of the State Bond Commission to the appropriate legislative committees. The legislative oversight committee shall have no jurisdiction or vote on any matter within the jurisdiction of the State Bond Commission. When the Legislature is not in session, members of the legislative oversight committee shall be paid per diem and all actual and necessary expenses, including, without limitation, travel expenses both within and without the state, from their respective contingent expense funds at the rate authorized for committee meetings when the Legislature is not in session. The State Bond Commission is authorized to reimburse the aforementioned contingent expense funds for such per diem and all other reasonable expenses paid by such funds, but the State Bond Commission shall pay the same only from the proceeds of refunding bonds and the State Bond Commission shall treat the same as part of the cost of issuing such bonds. The terms of the members of the legislative oversight committee shall expire at the end of their terms of office.

HISTORY: Laws, 1985, ch. 469, § 4, eff from and after passage (approved April 4, 1985).

ENVIRONMENTAL PROTECTION COUNCIL [REPEALED]

Sec.
5-3-151 through 5-3-167. Repealed.

§§ 5-3-151 through 5-3-167. Repealed.

Repealed by Laws, 1993, ch. 516, § 9, eff after June 30, 1998.
§§ 5-3-151 through 5-3-167. [Laws, 1993, ch. 516, §§ 1-9]

Editor's Notes — Former §§ 5-3-151 through 5-3-167 related to the creation, duties, powers and operation of the Environmental Protection Council.

Provisions similar to the provisions of §§ 5-3-151 through 5-3-167 were formerly found in § 49-29-1 et seq.

CHAPTER 5.

INTERSTATE COOPERATION

Sec.
5-5-1. Senate committee.
5-5-3. House committee.
5-5-5. Commission on Interstate Cooperation.
5-5-7. Members of the Commission.
5-5-9. Rules; compensation and expenses of members.
5-5-11. Reports.
5-5-13. Committee sittings.
5-5-15. Copies to other states.
5-5-17. Expenses.

§ 5-5-1. Senate committee.

There is hereby established a standing committee on interstate cooperation of the senate, to consist of five senators. The members and chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the senate.

HISTORY: Codes, 1942, § 3318; Laws, 1936, ch. 198.

RESEARCH REFERENCES

CJS.
81A C.J.S., States §§ 88, 89, 110–126.

§ 5-5-3. House committee.

There is hereby established a standing committee on interstate cooperation of the house of representatives, to consist of five members. The members and chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the house of representatives.

HISTORY: Codes, 1942, § 3319; Laws, 1936, ch. 198.

§ 5-5-5. Commission on Interstate Cooperation.

There is hereby established the Mississippi Commission on Interstate Cooperation, which shall encourage and arrange conferences with officials of other states and of other units of government; carry forward the participation of this state as a member of the council of state governments, both regionally and nationally; and formulate proposals for cooperation between this state and other states.

HISTORY: Codes, 1942, § 3317; Laws, 1936, ch. 198.

§ 5-5-7. Members of the Commission.

The commission on interstate cooperation shall be composed of eleven members, namely;

The five members of the committee on interstate cooperation of the senate,

The five members of the committee on interstate cooperation of the house of representatives, and

The governor.

HISTORY: Codes, 1942, § 3320; Laws, 1936, ch. 198.

§ 5-5-9. Rules; compensation and expenses of members.

The commission on interstate cooperation may provide such rules as it considers appropriate concerning the membership and the functioning of the committee. Members of the commission shall be compensated by a per diem as is authorized by law for each day spent in actual discharge of their duties and shall be reimbursed for mileage and actual expenses incurred in the performance of their duties in accordance with the requirements of Section 25-3-41.

HISTORY: Codes, 1942, § 3321; Laws, 1936, ch. 198; Laws, 1980, ch. 560, § 4, eff from and after passage (approved May 26, 1980).

Cross References — Provision authorizing uniform per diem compensation for officers and employees of state boards, commissions and agencies, see § 25-3-69.

§ 5-5-11. Reports.

The commission on interstate cooperation shall report to the governor and to the legislature within fifteen days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members shall serve without compensation.

HISTORY: Codes, 1942, § 3322; Laws, 1936, ch. 198.

§ 5-5-13. Committee sittings.

The standing committees on interstate cooperation of the senate and the house of representatives, shall function during the regular sessions of the legislature and also during the interim periods between such sessions. Their members shall serve until their successors are designated. They shall respectively constitute the senate and house councils of the American Legislators' Association for this state.

HISTORY: Codes, 1942, § 3323; Laws, 1936, ch. 198.

§ 5-5-15. Copies to other states.

The secretary of state shall forthwith communicate the text of this measure to the governor, to the senate, and to the house of representatives of each of the other states of the union, and memorialize each legislature which has not already done so, to enact a law similar to this measure, thus establishing a similar commission with like duties and powers, and thus joining with this state in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict.

HISTORY: Codes, 1942, § 3324; Laws, 1936, ch. 198.

§ 5-5-17. Expenses.

The legislature may appropriate any money in the treasury not otherwise appropriated for the purpose of carrying out the provisions of this chapter.

HISTORY: Codes, 1942, § 3325; Laws, 1936, ch. 198.

CHAPTER 7.

LOBBYING
[REPEALED]

Sec.
5-7-1 through 5-7-19. Repealed.

§§ 5-7-1 through 5-7-19. Repealed.

Repealed by Laws, 1994, ch. 469, § 12, eff from and after January 3, 1995 (the date the United States Attorney General interposed no objection to the repeal of this chapter).

§ 5-7-1. [Codes, Hemingway's 1917, § 5540; 1930, § 5477; 1942, § 3366; Laws, 1916, ch. 105; Laws, 1977, ch. 388, § 3]

§ 5-7-3. [Codes, Hemingway's 1917, § 5541; 1930, § 5478; 1942, § 3367; Laws, 1916, ch. 105]

§ 5-7-5. [Codes, Hemingway's 1917, § 5545; 1930, § 5482; 1942, § 3371; Laws, 1916, ch. 105; Laws, 1977, ch. 388, § 4]

§ 5-7-6. [Laws, 1977, ch. 388, § 1]

§ 5-7-7. [Codes, Hemingway's 1917, § 5542; 1930, § 5479; 1942, § 3368; Laws, 1916, ch. 105]

§ 5-7-9. [Codes, Hemingway's 1917, § 5543; 1930, § 5480; 1942, § 3369; Laws, 1916, ch. 105.]

§ 5-7-11. [Codes, Hemingway's 1917, §§ 5541, 5542, 5544; 1930, §§ 5478, 5479, 5481; 1942, §§ 3367, 3368, 3370; Laws, 1916, ch. 105; 1977, ch. 388, § 5]

§ 5-7-13. [Codes, Hemingway's 1917, § 5546; 1930, § 5483; 1942, § 3372; Laws, 1916, ch. 105; Laws, 1977, ch. 388, § 6]

§ 5-7-15. [Codes, Hemingway's 1917, § 5547; 1930, § 5484; 1942, § 3373; Laws, 1916, ch. 105; Laws, 1977, ch. 388, § 8]

§ 5-7-17. [Laws, 1977, ch. 388, § 7]

§ 5-7-19. [Laws, 1977, ch. 388, § 2]

Editor's Notes — Former §§ 5-7-1 through 5-7-19 pertained to lobbying. For similar provisions, see Chapter 8 of this title.

Former § 5-7-1 was entitled: Employers and employees to furnish statement of information for registration by the secretary of state and registration book to be kept by the secretary of state.

Former § 5-7-3 was entitled: Secretary of state to keep record of all lobby registrations.

Former § 5-7-5 was entitled: Fee to be paid to the secretary of state.

Former § 5-7-6 was entitled: Additional duties of secretary of state.

Former § 5-7-7 was entitled: Certificate of all persons or firms employed required.

Former § 5-7-9 was entitled: No person or firm to be employed on a contingent fee.

Former § 5-7-11 was entitled: Inapplicability of chapter.

Former § 5-7-13 was entitled: Itemized statements of amounts paid employees required and itemized statement of employees showing amounts of expenditures required; listing of benefitted legislators.

Former § 5-7-15 was entitled: Penalty for wilful violation.

Former § 5-7-17 was entitled: Lobbyists seeking to influence official actions of county boards of supervisors, municipal governing boards, school boards, etc.

Former § 5-7-19 was entitled: Attorney general to prosecute offenses.

CHAPTER 8.

LOBBYING LAW REFORM ACT OF 1994

Sec.

5-8-1. Short Title.
5-8-3. Definitions.
5-8-5. Registration statements; filing; contents; length of registration period; effective date of registration; termination of registration; forms.
5-8-7. Persons excluded from definition of "lobbyist" and "lobbyist's client."
5-8-9. Report of expenditures of lobbyist's client; exceptions.
5-8-11. Report of payments received by lobbyist from each lobbyist's client; exceptions.
5-8-13. Prohibited acts; required acts.
5-8-15. Investigations of violations of chapter.
5-8-17. Penalties; Ethics Commission hearings; appeals; investigation by Attorney General of continued non-compliance.
5-8-19. Duties of Secretary of State.
5-8-21. Penalties for intentional violations; prosecution of corporation or association not barred.
5-8-23. Severability clause.

Editor's Notes — Provisions similar to those found in this chapter were formerly found in Chapter 7 of this title.

§ 5-8-1. Short Title.

This chapter shall be cited as the "Lobbying Law Reform Act of 1994."

HISTORY: Laws, 1994, ch. 469, § 1; brought forward without change, Laws, 2015, ch. 431, § 9, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 1.

§ 5-8-3. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a)(i) "Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;
2. A promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money;
3. A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money;
4. A stock, bond, note or other investment interest in an entity;
5. A receipt given for the payment of money or other property;
6. A right in action;

7. A gift, tangible good, chattel or an interest in a gift, tangible good or chattel;

8. A loan or forgiveness of indebtedness;

9. A work of art, antique or collectible;

10. An automobile or other means of personal transportation;

11. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;

12. An honorarium or compensation for services;

13. A rebate or discount in the price of anything of value, unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive, legislative or public official or public employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;

14. A promise or offer of employment;

15. Any other thing of value that is pecuniary or compensatory in value to a person, except as otherwise provided in subparagraph (ii) of this paragraph; or

16. A payment that directly benefits an executive, legislative or public official or public employee or a member of that person's immediate family.

(ii) "Anything of value" does not mean:

1. Informational material such as books, reports, pamphlets, calendars or periodicals informing an executive, legislative or public official or public employee of her or his official duties;

2. A certificate, plaque or other commemorative item which has little pecuniary value;

3. Food and beverages for immediate consumption provided by a lobbyist up to a value of Ten Dollars ($10.00) in the aggregate during any calendar year;

4. Campaign contributions reported in accordance with Section 23-15-801 et seq., Mississippi Code of 1972.

(b) "Commission" means the Mississippi Ethics Commission, when used in the context of Section 5-8-19.

(c) "Compensation" means:

(i) An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, including reimbursement of travel, food or lodging costs; or

(ii) A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, including reimbursement of travel, food or lodging costs, for services rendered or to be rendered.

(d) "Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by a state or local governmental entity of a rule, regulation, order, decision, determination or other quasi-legislative action or proceeding.

(e) "Executive agency" means:

(i) An agency, board, commission, governing authority or other body in the executive branch of state or local government; or

(ii) An independent body of state or local government that is not a part of the legislative or judicial branch, but which shall include county boards of supervisors.

(f) "Executive official" means:

(i) A member or employee of a state agency, board, commission, governing authority or other body in the executive branch of state or local government; or

(ii) A public official or public employee, or any employee of such person, of state or local government who takes an executive action.

(g) "Expenditure" means:

(i) A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose;

(ii) A payment to a lobbyist for salary, fee, commission, compensation for expenses, or other purpose by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(iii) A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(iv) A payment that directly benefits an executive, legislative or public official or a member of the official's immediate family;

(v) A payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with an executive, legislative or public official made at the direction of the employee's employer;

(vi) A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive, legislative or public official; or

(vii) A payment or reimbursement for food, beverages, travel, lodging, entertainment or sporting activities.

(h) "Gift" means anything of value to the extent that consideration of equal or greater value is not received, including a rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive, legislative or public official.

(i) "Legislative action" means:

(i) Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat or rejection of a bill, resolution, amendment, motion, report, nomination, appointment or other matter by the Mississippi State Legislature or a member or employee of the Legislature acting or purporting to act in an official capacity;

(ii) Action by the Governor in approving or vetoing a bill or other action of the Legislature;

(iii) Action by the Legislature in:

1. Overriding or sustaining a veto by the Governor; or

2. Considering, confirming or rejecting an executive appointment of the Governor.

(j) "Legislative official" means:

(i) A member, member-elect or presiding officer of the Legislature;

(ii) A member of a commission or other entity established by and responsible to either or both houses of the Legislature;

(iii) A staff member, officer or employee to a member or member-elect of the Legislature, to a member of a commission or other entity established by and responsible to either or both houses of the Legislature, or to the Legislature or any house, committee or office thereof.

(k) "Lobbying" means:

(i) Influencing or attempting to influence legislative or executive action through oral or written communication; or

(ii) Solicitation of others to influence legislative or executive action; or

(iii) Paying or promising to pay anything of value directly or indirectly related to legislative or executive action.

(*l*) "Lobbyist" means:

(i) An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;

(ii) An individual who represents a legislative or public official or public employee, or who represents a person, organization, association or other group, for the purpose of lobbying;

(iii) A sole proprietor, owner, part owner or shareholder in a business who has a pecuniary interest in legislative or executive action, who engages in lobbying activities; or

(iv) Any individual described in subparagraphs (i), (ii) or (iii) of this paragraph (*l*) who is employed by or has contracted with any agency, legislative or public official or public employee, or any other public entity for the purpose of providing any type of consulting or other similar service but also engages in any type of lobbying activities. Such individual shall not qualify for any exemption under Section 5-8-7.

(m) "Lobbyist's client" means the person in whose behalf the lobbyist influences or attempts to influence legislative or executive action.

(n) "Local" means all entities of government at the county, county-district, multicounty district, municipal or school district level.

(o) "Person" means an individual, proprietorship, firm, partnership, joint venture, joint-stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization or group of persons acting in concert.

(p) "Public employee" means an individual appointed to a position, including a position created by statute, whether compensated or not, in state or local government and includes any employee of the public employee. The term includes a member of the board of trustees, chancellor, vice chancellor or the equivalent thereof in the state university system or the state community and junior college system, and a president of a state college or university.

(q) "Public official" means an individual elected to a state or local office, or an individual who is appointed to fill a vacancy in the office.

(r) "Value" means the retail cost or fair market worth of an item or items, whichever is greater.

HISTORY: Laws, 1994, ch. 469, § 2; Laws, 2015, ch. 431, § 7, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 2.

JUDICIAL DECISIONS

1. Public employees and officials.

Person who was merely employed by the state was not a public officer or official for purposes of Miss. Code Ann. § 5-8-3(q). Young v. Stevens, 968 So. 2d 1260, 2007 Miss. LEXIS 347 (Miss. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Public employees such as members of the Mississippi State Board of Architecture are subject to the registration and reporting requirements of the Lobbying Reform Act of 1974. Wilkinson, Nov. 21, 2003, A.G. Op. 03-0624.

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Lobbying § 1, 6, 11-13.

§ 5-8-5. Registration statements; filing; contents; length of registration period; effective date of registration; termination of registration; forms.

(1) Except as otherwise provided in Section 5-8-7 of this chapter and in addition to reports required by Sections 5-8-9 and 5-8-11 of this chapter, every lobbyist and every lobbyist's client shall file a registration statement with the Secretary of State within five (5) calendar days after becoming a lobbyist, becoming a lobbyist's client or beginning to lobby for a new client. The filing of every registration statement shall be accompanied by the payment of a registration fee of Twenty-five Dollars ($25.00) to the Secretary of State. The

lobbyist shall file the registration statement and pay the fees to the Secretary of State for each lobbyist's client whom the lobbyist represents.

(2) The registration statement shall include the following:

(a) The name, address, occupation and telephone number of the lobbyist;

(b) The name, address, telephone number and principal place of business of the lobbyist's client;

(c) The kind of business of the lobbyist's client;

(d) The full name of the person or persons who control the lobbyist's client, the partners, if any, and officers of the lobbyist's client;

(e) The full name, address and telephone number of each lobbyist employed by or representing the lobbyist's client; and

(f) A statement or statements by the lobbyist and lobbyist's client indicating the specific nature of the issues being advocated for or against on behalf of the lobbyist's client, with sufficient detail so that the precise nature of the lobbyist's advocacy is evident from the statement itself.

(3) Registration shall be valid for one (1) calendar year, commencing January 1 and ending December 31 of each year. If the lobbyist or lobbyist's client shall register after January 1, the registration shall be effective upon actual receipt by the Secretary of State and shall cease on December 31 of each year.

(4) A lobbyist or lobbyist's client may terminate his registration by filing an expenditure report required under this chapter. Such report shall include information through the last day of lobbying activity. The termination report must indicate that the lobbyist intends to use the report as the final accounting of lobbying activity.

(5) The Secretary of State shall prescribe and make available to every lobbyist and lobbyist's client appropriate forms for filing registration statements as required by Sections 5-8-1 through 5-8-19 of this chapter.

HISTORY: Laws, 1994, ch. 469, § 3; brought forward without change, Laws, 2015, ch. 431, § 10, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 3.

RESEARCH REFERENCES

ALR.

Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-7. Persons excluded from definition of "lobbyist" and "lobbyist's client."

Notwithstanding any other provisions of this chapter, except as otherwise provided in Section 5-8-3(*l*)(iv), the following person shall not be included within the definition of "lobbyist" or "lobbyist's client" under this chapter, and accordingly the registration and reporting provisions, including the payment of related fees, of this chapter do not apply to:

(a) A legislative or public official acting in an official capacity.

(b) An individual who:

(i) Represents or purports to represent only the individual;

(ii) Receives no compensation or anything of value for lobbying; and

(iii) Has no pecuniary interest in the legislative or executive action.

(c) An individual lobbying in his or her own interest, his or her own business interest, who pays, or promises to pay, offers to pay or causes to be paid to public officials, legislative officials or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(d) An individual lobbying on behalf of his or her employer's business interest where such lobbying is not a primary or regular function of his employment position if such individual pays, promises to pay, offers to pay, or causes to be paid individually or on the employer's behalf to public officials, legislative officials, or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(e) An individual lobbying on behalf of an association of which he or she is a member, where such lobbying is not a primary or regular function of his or her position in the association, if such individual pays, promises to pay, offers to pay, or causes to be paid individually or on the association's behalf to public officials, legislative officials or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(f) An individual who is a shareholder, owner or part owner of a business who lobbies on behalf of such business, where such individual is not an employee of the business, if such individual pays, promises to pay, offers to pay, or causes to be paid individually or on behalf of the business to public officials, legislative officials or public employees any thing or things of value aggregating in value to less than Two Hundred Dollars ($200.00) in any calendar year.

(g) An individual who:

(i) Limits lobbying solely to formal testimony before a public meeting of a legislative body or an executive agency, or a committee, division or department thereof; and

(ii) Registers the appearance in the records of the public body, if such records are kept.

(h) An individual who is a licensed attorney representing a client by:

(i) Drafting bills, preparing arguments thereon, and advising the client or rendering opinions as to the construction and effect of proposed or pending legislation, where such services are usual and customary professional legal services which are not otherwise connected with legislative action; or

(ii) Providing information, on behalf of the client, to an executive or public official, a public employee, or an agency, board, commission, governing authority or other body of state or local government where such services are usual and customary professional legal services including or related to a particular nonlegislative matter, case or controversy.

(i) News media and employees of the news media whose activity is limited solely to the publication or broadcast of news, editorial comments, or paid advertisements that attempt to influence legislative or executive action. For the purposes of this section, "news media" shall be construed to be bona fide radio and television stations, newspapers, journals or magazines, or bona fide news bureaus or associations which in turn furnish information solely to bona fide radio or television stations, newspapers, journals or magazines.

(j) An individual who engages in lobbying activities exclusively on behalf of a religious organization which qualifies as a tax-exempt organization under the Internal Revenue Code.

(k) An individual who is a nonattorney professional and who receives professional fees and expenses to represent clients on executive agency matters, except that if anything of value shall be paid or promised to be paid directly or indirectly on behalf of a client for the personal use or benefit of an executive or public official or public employee, then expenditures and actions of the individual are reportable under this chapter, and the individual must register as a lobbyist.

HISTORY: Laws, 1994, ch. 469, § 4; Laws, 2015, ch. 431, § 8, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 4.

Cross References — Lobbyists and lobbyist's clients to file registration statements except as provided in this section, see § 5-8-5.

Lobbyist's clients to file report of expenditures, except as provided in this section, see § 5-8-5.

Lobbyist to file report of payments received, except as provided in this section, see § 5-8-5.

OPINIONS OF THE ATTORNEY GENERAL

Pursuant to the exception in Section 5-8-7(d), staff members who are frequently requested to provide information concerning the legislative agenda of the PERS Board of Trustees, would not be required to register or report as lobbyists, provided that they do not pay, promise to pay, offer to pay, or cause to be paid, individually or on their employer's behalf, public officials, legislative officials, or public employees any thing or things of value aggregating in value to two hundred dollars in a calendar year. Walker, March 8, 1995, A.G. Op. #95-0091.

Sections 5-8-13(4) and 5-8-7 provide that a public employee who represents a legislative or public official or public employee and who, as a primary or regular function of his employment, engages in lobbying activities when acting in his official capacity would be a lobbyist and subject to the registration and reporting requirements of the Lobbying Reform Act of 1994. Hamm, May 17, 1995, A.G. Op. #95-0171.

If the request for approval of an appropriation is not a primary or regular function of the employment position of the person making the request, such person would not come under the statutory definition of "lobbyist" and would not be required to register and report as such. See Section 5-8-7(d). Stennett, August 2, 1995, A.G. Op. #95-0336.

If, as a matter of fact, an activity is related to law enforcement matters or the duties of that office pursuant to Section 5-8-7, the Sheriff would be exempt from the registration and reporting requirements of the Lobbying Law Reform Act of 1994. Torrence, October 11, 1995, A.G. Op. #95-0655.

If the communication is made at the request, suggestion or direction of the lobbyist's client any expenditures in connection therewith must be reported. The fact that specific expenditures may not have been directed, suggested or requested by the lobbyist's client would not exempt the expenditures from the reporting requirements. See Section 5-8-7(d). Ford, December 20, 1995, A.G. Op. #95-0844.

If the communication by a non-lobbyist employee is not suggested, directed or requested by the lobbyist-client but is done totally independently by the employee the expenditure would not be required to be reported by the lobbyist-client. It would, of course, have to be reported by the employee if such expenditures aggregate in value to $200.00 in any calendar year. See Section 5-8-7(d). Ford, December 20, 1995, A.G. Op. #95-0844.

The Executive Director of the Public Employees' Retirement System is a public employee insofar as the lobbying laws are concern. Nothing in this section excludes a public employee from the definition of "lobbyist." Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

RESEARCH REFERENCES

ALR.

Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-9. Report of expenditures of lobbyist's client; exceptions.

(1) Except as otherwise provided in Section 5-8-7 of this chapter and in subsection (7) of this section, no later than January 30 of each year, a lobbyist's client shall file a report of expenditures with the Secretary of State. The report must contain information on all expenditures paid by the lobbyist's client during the preceding twelve (12) calendar months.

(2) The report must list expenditures for the purpose of lobbying according to the following categories:

(a) A payment to a lobbyist for salary, fee, compensation for expenses, or other purpose by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(b) A payment for those portions of office rent, utilities, supplies and compensation of support personnel attributable to lobbying activities;

(c) A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(d) A payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with an executive, legislative or public official or public employee, where such communication is made at the request, suggestion or direction of the lobbyist's client;

(e) A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive, legislative or public official or public employee, where such communication is made at the request, suggestion or direction of the lobbyist's client;

(f) A payment or reimbursement for food, beverages, travel, lodging, entertainment or sporting activities; or

(g) A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose.

(3) For each executive, legislative or public official or public employee who was paid, given or promised to be paid anything of value in full or in part from the lobbyist's client, the report must also include:

(a) The name of the executive, legislative or public official or public employee who was paid, given or promised anything of value;

(b) A description and the monetary value of anything of value paid, given or promised to such official or employee, with sufficient detail so that the nature of the transfer is clear;

(c) The place and date anything of value was paid, given or promised; and

(d) The name of the person who paid, gave or promised to pay anything of value.

(4) Each expenditure for the purpose of lobbying must be reported in accordance with the category of the expenditure required in this section and with any additional categories as may be required by rule or regulation of the Secretary of State.

(5) The report due January 30 shall include a cumulative total for the calendar year for all reportable categories.

(6) A lobbyist's client shall maintain contemporaneous records of all expenditures reportable under Sections 5-8-1 through 5-8-19 of this chapter and shall retain such records for a period of two (2) years.

(7) If the State of Mississippi is a lobbyist's client, the State of Mississippi shall be exempt from filing an annual report.

(8)(a) If the entire Legislature and all statewide elected officials are individually invited to a single function, which is sponsored by a lobbyist's client, or a lobbyist on behalf of such client, and is to begin and end within one (1) day, then it shall not be necessary to report the costs related to food and beverages offered for immediate consumption required in subsection (3) of this section, so long as food and beverages provided at such functions are offered equally to all invitees; however, in all such cases, the amount expended for such functions shall be reported in accordance with the provisions of this subsection.

(b) The report of the expenditure connected with a single function as described in paragraph (a) of this subsection shall be made by the lobbyist's client and shall include the following:

(i) The total amount of money expended for the function;

(ii) The estimated total number of persons in attendance at the function;

(iii) The estimated total number of public officials in attendance at the function.

HISTORY: Laws, 1994, ch. 469, § 5; brought forward without change, Laws, 2015, ch. 431, § 11, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 5.

Cross References — Lobbyists and lobbyist's clients to file registration statements in addition to reports required in this section, see § 5-8-5.

RESEARCH REFERENCES

ALR.

Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-11. Report of payments received by lobbyist from each lobbyist's client; exceptions.

(1) Except as otherwise provided in Section 5-8-7 of this chapter, a lobbyist shall file with the Secretary of State a separate report for each lobbyist's client. The report shall specifically list all payments received from the lobbyist's client and all expenditures that were initiated or paid by the lobbyist on behalf of each lobbyist's client during each reporting period required herein.

(2) The report must list expenditures for the purpose of lobbying according to the following categories:

(a) A payment to the lobbyist for salary, fee, compensation for expenses, or other purpose by the person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(b) A payment for those portions of office rent, utilities, supplies and compensation of support personnel attributable to lobbying activities;

(c) A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(d) A payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with an executive, legislative or public official or public employee, where such communication is made at the request, suggestion or direction of the lobbyist;

(e) A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive, legislative or public official or public employee, where such communication is made at the request, suggestion or direction of the lobbyist;

(f) A payment or reimbursement for food, beverages, travel, lodging, entertainment or sporting activities;

(g) A purchase, payment, distribution, loan, or forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose.

(3) For each executive, legislative or public official or public employee who was paid, given or promised to be paid anything of value in full or in part from the lobbyist, the report must also include:

(a) The name of the executive, legislative or public official or employee who was paid, given or promised anything of value;

(b) A description and the monetary value of anything of value paid, given or promised to such official or employee, with sufficient detail so that the nature of the transfer is clear;

(c) The place and date anything of value was paid, given or promised; and

(d) The name of the person who paid, gave or promised to pay anything of value.

(4) Each expenditure for the purpose of lobbying must be reported in accordance with the category of the expenditure required in this section and with any additional categories as may be required by rule or regulation of the Secretary of State.

(5) A report of expenditures must be filed with the Secretary of State no later than January 30 of each year. The report shall contain information on all expenditures paid or initiated by the lobbyist on behalf of each lobbyist's client during the preceding twelve (12) calendar months, and it shall include a cumulative total for the calendar year of all reportable categories.

(6) In addition to the annual report required above, a lobbyist shall file two (2) reports during regular sessions of the Legislature with the Secretary of State on February 25 and within ten (10) days after the Legislature's adjournment sine die. Such additional report shall include the name of the executive, legislative, or public official or public employee who receives anything of value from the lobbyist or from the lobbyist on behalf of the lobbyist's client, the name of the person receiving the payment, the name of the person making the payment, the amount of the payment and the date of the payment. However, any lobbyist who lobbies local government exclusively shall be exempt from the requirement of filing the reports required by this paragraph.

(7)(a) If the entire Legislature and all statewide elected officials are individually invited to a single function which is sponsored by a lobbyist on behalf of one or more lobbyist's clients and is to begin and end within one (1) day, then it shall not be necessary to report the costs related to food and beverages offered for immediate consumption as required in subsection (3) of this section, so long as food and beverages provided at such functions are offered equally to all invitees; however, in all such cases, the amount expended for such functions shall be reported in accordance with the provisions of this subsection.

(b) The report of the expenditure connected with a single function as described in paragraph (a) of this subsection shall be made by the lobbyist and shall include the following:

(i) The total amount of money expended for the function, reception or meal;

(ii) The total number of persons in attendance at the function, reception or meal;

(iii) The total number of legislators in attendance at the function, reception or meal.

(8) A lobbyist shall maintain contemporaneous records of all expenditures reportable under Sections 5-8-1 through 5-8-19 of this chapter, and shall retain such records for a period of two (2) years.

HISTORY: Laws, 1994, ch. 469, § 6; brought forward without change, Laws, 2015, ch. 431, § 12, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 6.

Cross References — Lobbyists and lobbyist's clients to file registration statements in addition to reports required in this section, see § 5-8-5.

RESEARCH REFERENCES

ALR.

Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-13. Prohibited acts; required acts.

(1) A lobbyist shall not contract to receive or accept compensation dependent upon the success or failure of a legislative or executive action.

(2) A lobbyist or lobbyist's client shall not knowingly or willfully make or cause to be made a false statement or misrepresentation of facts to an executive, legislative or public official or public employee, or to the public in general with the intent to affect the outcome of a legislative or executive action.

(3) A lobbyist or lobbyist's client shall not cause a legislative or executive action for the purpose of obtaining employment to lobby in support of or in opposition to the legislative or executive action.

(4) An executive, legislative or public official or public employee shall not be a lobbyist, except that he may act as a lobbyist when acting in his official capacity.

(5) A lobbyist must disclose anything of value given in whole or in part to any executive, legislative or public official or public employee.

HISTORY: Laws, 1994, ch. 469, § 7; brought forward without change, Laws, 2015, ch. 431, § 13, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 7.

OPINIONS OF THE ATTORNEY GENERAL

Sections 5-8-13(4) and 5-8-7 provide that a public employee who represents a legislative or public official or public employee, and who as a primary or regular function of his employment engages in lobbying activities when acting in his official capacity would be a lobbyist and subject to the registration and reporting requirements of the Lobbying Reform Act of 1994. Hamm, May 17, 1995, A.G. Op. #95-0171.

The provisions of subsection (4) of this section are not applicable to the four "non-appointed" members of the Mississippi Title V Advisory Council. Chisholm, Aug. 8, 2003, A.G. Op. 03-0403.

Where an attorney/lobbyist member of a legislator's law firm would have a separate business and work through an entirely separate corporation owned by the attorney himself in which the legislator would have no ownership and no involvement, there would be a violation of lobbying laws on the part of the legislator. Ross, Oct. 20, 2006, A.G. Op. 06-0545.

RESEARCH REFERENCES

ALR.

Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-15. Investigations of violations of chapter.

(1) The district attorney of the circuit court of the district wherein an alleged violation occurred shall investigate violations of this chapter.

(2) In addition to a district attorney's authority as set forth in subsection (1) of this section, the Attorney General shall investigate alleged violations of this chapter and use all existing powers granted that office in conducting such investigations.

HISTORY: Laws, 1994, ch. 469, § 8; brought forward without change, Laws, 2015, ch. 431, § 14, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 8.

OPINIONS OF THE ATTORNEY GENERAL

This section bestows jurisdiction to investigate violations of the lobbying laws on both the attorney general and the appropriate district attorney. Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

RESEARCH REFERENCES

ALR.
Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.
51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-17. Penalties; Ethics Commission hearings; appeals; investigation by Attorney General of continued noncompliance.

(1) In addition to any other penalty permitted by law, the Secretary of State shall require any person who fails to file a report as required under Sections 5-8-1 through 5-8-19 of this chapter, or who shall file a report which fails to comply with the material particulars of Sections 5-8-1 through 5-8-19 of this chapter or any rules, regulations or procedures implemented pursuant to Sections 5-8-1 through 5-8-19 of this chapter, to be assessed a civil penalty as follows:

(a) Within five (5) calendar days after any deadline for filing a report pursuant to Sections 5-8-1 through 5-8-19 of this chapter, the Secretary of State shall compile a list of those lobbyists and lobbyists' clients who have failed to file a required report. The Secretary of State shall provide each lobbyist or lobbyist's client who has failed to file such a report notice of such failure by certified mail.

(b) Beginning with the tenth calendar day after which any report shall be due, the Secretary of State shall assess the delinquent lobbyist and delinquent lobbyist's client a civil penalty of Fifty Dollars ($50.00) per day and part of any day until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. However, in the discretion of the Secretary of State, the assessing of such fine may be waived if the Secretary of State shall determine that unforeseeable mitigating circumstances, such as the health of the lobbyist, shall interfere with timely filing of a required report.

(c) Filing of the required report and payment of the fine within ten (10) calendar days of notice by the Secretary of State that a required statement has not been filed constitutes compliance with Sections 5-8-1 through 5-8-19 of this chapter.

(d) Payment of the fine without filing the required report does not in any way excuse or exempt any person required to file from the filing requirements of Sections 5-8-1 through 5-8-19 of this chapter.

(2)(a) Upon the sworn application of a lobbyist or lobbyist's client against whom a civil penalty has been assessed pursuant to subsection (1), the Secretary of State shall forward the application to the Mississippi Ethics Commission. The commission shall fix a time and place for a hearing and shall cause a written notice specifying the civil penalties that have been assessed against the lobbyist or lobbyist's client and notice of the time and place of the hearing to be served upon the lobbyist or lobbyist's client at least twenty (20) calendar days prior to the hearing date. Such notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known business address of the lobbyist or lobbyist's client.

(b) The commission is authorized to issue subpoenas for the attendance of witnesses and the production of books and papers at such hearing. Process issued by the commission shall extend to all parts of the state and shall be served by any person designated by the commission for such service.

(c) The lobbyist or lobbyist's client shall have the right to appear either personally or by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the commission.

(d) A hearing officer shall be appointed by the commission to conduct the hearing. At the hearing, the hearing officer shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the commission, who shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be based upon sufficient evidence to sustain it.

(e) Where, in any proceeding before the commission, any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(f) Within fifteen (15) calendar days after conclusion of the hearing, the commission shall reduce its decision to writing and forward an attested true copy thereof to the last known business address of the lobbyist or lobbyist's client by way of United States first-class, certified mail, postage prepaid.

(3)(a) The right to appeal from the decision of the commission in an administrative hearing concerning the assessment of civil penalties authorized pursuant to this section is hereby granted. Such appeal shall be to the Circuit Court of Hinds County and shall include a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) calendar days after notice of the decision of the commission following an administrative hearing. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the commission, and the filing of a bond in the sum of Two Hundred Dollars ($200.00), conditioned that if the decision of the commission be affirmed by the court, the lobbyist or lobbyist's client will pay the costs of the appeal and the action in court. If the decision is reversed by the court, the Secretary of State will pay the costs of the appeal and the action in court.

(b) If there is an appeal, such appeal shall act as a supersedeas. The court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may be tried in vacation, in the court's discretion. The scope of review of the court shall be limited to a review of the record made before the commission to determine if the action of the commission is unlawful for the reason that it was (i) not supported by substantial evidence, (ii) arbitrary or capricious, (iii) beyond the power of the commission to make, or (iv) in violation of some statutory or constitutional right of the appellant. The decision of the court may be appealed to the Supreme Court in the manner provided by law.

(4) If, after forty-five (45) calendar days of the date of the administrative hearing procedure set forth in subsection (2), the lobbyist or lobbyist's client shall not file a valid report as required by law, the commission shall notify the Attorney General of the delinquency. The Attorney General shall investigate said offense in accordance with the provisions of this chapter.

HISTORY: Laws, 1994, ch. 469, § 9; brought forward without change, Laws, 2015, ch. 431, § 15, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the paragraph (b) of subsection (1). The word "unforseeable" was changed to "unforeseeable." The Joint Committee ratified the correction at its December 3, 1996 meeting.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 9.

Cross References — Additional penalties, see § 5-8-21.

OPINIONS OF THE ATTORNEY GENERAL

Anyone who has knowledge that a person failed to file a report or filed a report which fails to comply with the requirements of the lobbying laws. Should provide pertinent information to the secretary of state. No statute of limitations can be found that would be applicable to the assessment of a civil penalty. Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

RESEARCH REFERENCES

ALR.

Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-19. Duties of Secretary of State.

The Secretary of State shall:

(a) Provide forms for registration and for statements required by Sections 5-8-1 through 5-8-19 of this chapter to all persons required to file.

(b) Issue a certificate of registration to a lobbyist registered under the provisions of Sections 5-8-1 through 5-8-19 of this chapter.

(c) Make all statements and reports filed available for public inspection and copying, at a reasonable cost, during regular office hours.

(d) Publish an annual report summarizing the financial activities of lobbyists and lobbyists' clients, and such annual report shall not include amounts reported pursuant to Sections 5-8-9(8) and 5-8-11(7) for single functions in the calculation of the cumulative total amount of money expended for lobbying purposes.

HISTORY: Laws, 1994, ch. 469, § 10; brought forward without change, Laws, 2015, ch. 431, § 16, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 10.

Cross References — Mississippi Ethics Commission in context of this section, see § 5-8-3.

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-21. Penalties for intentional violations; prosecution of corporation or association not barred.

Any person who, with intent, violates any of the provisions of this chapter whether acting either individually or as an officer, agent, employee, or counsel of a person, firm, corporation or association, or any person whether acting individually or as the officer, employee, agent or counsel of a firm, corporation or association, who, with intent, causes or participates, either directly or indirectly, in any violation of the provisions of this chapter shall upon conviction for the first offense be fined not more than One Thousand Dollars ($1,000.00) or imprisoned in the county jail not more than six (6) months or both and upon conviction for a second or any subsequent offense be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned in the Penitentiary not more than three (3) years or both. Any association or corporation which, with intent, violates, or causes or participates, either directly or indirectly, in any violation of any of the provisions of this chapter shall, for each offense, upon conviction, be fined not more than Five Thousand Dollars ($5,000.00). The prosecution or conviction of one or more of the officers or employees of such corporation or association shall not be a bar to the prosecution and conviction of the corporation or association for such offense.

HISTORY: Laws, 1994, ch. 469, § 11; brought forward without change, Laws, 2015, ch. 431, § 17, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 11.

Cross References — Additional penalties, see § 5-8-17.

OPINIONS OF THE ATTORNEY GENERAL

Anyone who wishes to initiate a criminal prosecution may do so by filing an appropriate sworn affidavit. However, pursuant to § 99-1-5, such prosecution must be commenced within two years after the commission of the offense. Flowers, Nov. 16, 2004, A.G. Op. 04-0542.

RESEARCH REFERENCES

ALR.

Validity and construction of state and municipal enactments regulating lobbying. 35 A.L.R.6th 1.

Am. Jur.

51 Am. Jur. 2d, Lobbying §§ 1, 6, 11-13.

§ 5-8-23. Severability clause.

If any section, paragraph, sentence, clause, phrase or any part of this chapter passed hereafter is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

HISTORY: Laws, 1994, ch. 469, § 13; brought forward without change, Laws, 2015, ch. 431, § 18, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated January 3, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 469, § 13.

CHAPTER 9.

AGENCY REVIEW

Sec.
5-9-1 through 5-9-11. Repealed.
5-9-13. Executive orders establishing governmental units enacted into statutory law.
5-9-15 through 5-9-35. Repealed.

§§ 5-9-1 through 5-9-11. Repealed.

Repealed by Laws, 1979, ch. 301, § 56, eff from and after December 31, 1984.

§ 5-9-1. [En Laws, 1979, ch. 301, § 1]

§ 5-9-3. [En Laws, 1979, ch. 301, § 2]

§ 5-9-5. [En Laws, 1979, ch. 301, § 4 (intro), (b); Laws, 1980, ch. 543, § 19]

§ 5-9-7. [En Laws, 1979, ch. 301, § 4 (intro), (c)]

§ 5-9-9. [En Laws, 1979, ch. 301, § 4 (intro), (d); Laws, 1980, ch. 312, § 37]

§ 5-9-11. [En Laws, 1979, ch. 301, § 4 (intro), (a); Laws, 1979, ch. 357, § 1]

Editor's Notes — Former § 5-9-1 provided the short title of Mississippi Agency Review Law of 1978.

Former § 5-9-3 specified the legislative purpose of the Agency Review Law of 1978.

Former § 5-9-5 provided for the phasing out of operations of twenty governmental units beginning on July 1, 1980.

Former § 5-9-7 provided for the phasing out of operations of sixteen governmental units beginning on July 1, 1981.

Former § 5-9-9 provided for the phasing out of operations of fourteen governmental units beginning on July 1, 1982.

Former § 5-9-11 provided for the phasing out of operations of twenty governmental units beginning on July 1, 1983.

§ 5-9-13. Executive orders establishing governmental units enacted into statutory law.

(1) Executive orders issued by governors after January 3, 1979, which establish, or have the effect of establishing, a governmental unit shall be terminated unless they are enacted into statutory law in the following manner. If such a governmental unit is established while the legislature is in regular session and more than thirty (30) days prior to the scheduled adjournment of that session, it must be enacted into statutory law by the scheduled date of adjournment or else it is terminated on that date by operation of law. In the event such a governmental unit is established while the legislature is in session but less than thirty (30) days before scheduled adjournment or if such a governmental unit is created while the legislature is not in session, then it must be enacted into statutory law by the date of adjournment of the next

regular session of the legislature or else it is terminated on that date by operation of law.

(2) The legislature may establish a governmental unit by statute as it was created in the executive order or it may enact such changes in the status, powers or jurisdiction of the governmental unit as it may deem necessary and proper.

(3) No governmental unit created by executive order shall incur any obligations, financial or otherwise, or enter into any contracts or other commitments which extend beyond the date of adjournment of the legislative session in which the agency must be enacted into statutory law to avoid termination.

(4) Failure of the governmental unit to be enacted into statutory law shall not invalidate any act done by any officer or employee thereof if the act is otherwise lawful and has been fully executed prior to the date of termination.

(5) No power, duty or authority of any governmental unit which fails to be enacted into statutory law as required by this section shall be transferred in any manner other than by legislative enactment to any existing agency, nor shall any such power, duty or authority be allocated to any successor governmental unit in any manner other than by legislative enactment. No funds shall be appropriated to or otherwise made available from any source whatsoever to a governmental unit created by executive order which was not enacted into statutory law as provided in this section.

(6) A governmental unit created by executive order after January 3, 1979, shall not duplicate the functions of other governmental units created by statute.

HISTORY: Laws, 1979, ch. 301, § 5, eff from and after passage (Governor's veto overridden by Legislature on January 3, 1979).

OPINIONS OF THE ATTORNEY GENERAL

If the Legislature has decided not to renew the authority of a state agency, then the Governor lacks the authority to re-create that agency using an executive order. McCoy, May 20, 2004, A.G. Op. 04-0227.

§§ 5-9-15 through 5-9-35. Repealed.

Repealed by Laws, 1979, ch. 301, § 56, eff from and after December 31, 1984.

§ 5-9-15 through § 5-9-35. [En Laws, 1979, ch. 301, §§ 3, 6-15]

Editor's Notes — Former § 5-9-15 provided for the continuation of life of the governmental units during the phase out period.

Former § 5-9-17 provided for the establishment of legislative reviewing committees to consider termination, continuation or modification of governmental units being phased out.

Former § 5-9-19 directed the reviewing committees to hold public hearings, and directed the governmental units to provide information to the committees.

Former § 5-9-21 established the criteria for determining whether to continue the existence of a governmental unit.

Former § 5-9-23 specified the nature and direction of the reviewing committee's inquiry into the governmental unit.

Former § 5-9-25 authorized the reviewing committee to request information from the committee on performance evaluation and expenditure review.

Former § 5-9-27 directed the reviewing committees to submit recommendations on whether to terminate, continue or modify a governmental unit.

Former § 5-9-29 stated the legislative intent that all members of the legislature have an opportunity to vote on recommendations for continuing, modifying or terminating governmental units.

Former § 5-9-31 prohibited the funding of a governmental unit after its termination.

Former § 5-9-33 prohibited the continuation of more than one governmental unit in a single legislative bill.

Former § 5-9-35 provided provisions on the effect of Chapter 9 on other related legislative action or claims against governmental units.

CHAPTER 11.

ABOLISHMENT OF AGENCIES

Sec.
5-11-1. Definitions.
5-11-3. Transition authority required to develop plans to facilitate abolition of agency or agency facility; reports; audit.
5-11-5. Powers and duties of transition authority.

§ 5-11-1. Definitions.

The following terms as used in this chapter shall have the meanings ascribed to them in this section:

(a) "Agency" means any agency as defined in Section 25-9-107(d);

(b) "Agency facility" means any building or group of buildings that have been used for a function that the Legislature has abolished or transferred to another agency under provisions of general law;

(c) "Abolished agency" means any agency, any public community or junior college or any state institution of higher learning whose enabling legislation has been repealed or has been amended so as to transfer authority for the agency's duties and responsibilities, in whole or in part, to another agency;

(d) "Complete and correct inventory" means a listing of all personal property, fixtures or real property titled to, or under the control of, an agency facility or abolished agency. Such listing shall be prepared by the agency that is to be responsible for the agency facility or the abolished agency's duties and responsibilities, and shall contain all real and personal property titled to, or under the control of, the abolished agency or agency facility. After the preparation of the listing, the listing shall be reconciled against the master state property inventory of the Department of Audit for all accounts;

(e) "Transition authority" means any council or group of persons authorized by law to provide oversight or plan the transfer of duties, property and services of an abolished agency or agency facility to another agency.

HISTORY: Laws, 1991, ch. 447, § 1, eff from and after July 1, 1991.

§ 5-11-3. Transition authority required to develop plans to facilitate abolition of agency or agency facility; reports; audit.

(1) Whenever the Legislature authorizes or requires the abolition of any agency or agency facility, the agency receiving the authority to perform the duties of the abolished agency or receiving the property of the abolished agency or agency facility for disposal or other use shall, before performance of the duties of the abolished agency or disposal of the agency facility property:

(a) Develop task-based plans to facilitate the abolition of the agency or agency facility that shall include:

(i) A statement of management responsibilities that clearly defines the sequential tasks of all personnel who will be responsible for carrying out the disposal or transfer of property, or the transfer of duties of the abolished agency; and

(ii) Projections of the time required to complete required tasks.

(b) Compile a complete and correct inventory;

(c) Write procedures and criteria governing the acquisition or disposition of any real or personal property under the control of, or titled to, the agency or agency facility abolished; and

(d) Devise security plans and policies, with written security procedures governing access to any agency facility being abolished.

(2) In addition to the requirements of subsection (1) of this section, the agency responsible for the duties of the abolished agency or responsible for the disposal of property of the agency facility shall prepare reports to the Legislature and Governor that include copies of all plans and procedures required under this section and a detailed written account of the actual accomplishments of the agency responsible for administering the abolition of the agency or agency facility. Such reports shall be delivered to the Legislature and the Governor not less than ninety (90) days after the effective date of the act requiring the abolishment of the agency or agency facility.

(3) In addition to all reports, plans and procedures required under subsection 1 of this section, the State Department of Audit shall prepare a complete financial audit of any agency facility or abolished agency. Such audit shall be complete not less than ninety (90) days after the effective date of the act requiring the abolishment of the agency of agency facility.

HISTORY: Laws, 1991, ch. 447, § 2, eff from and after July 1, 1991.

§ 5-11-5. Powers and duties of transition authority.

Whenever the Legislature creates a transition authority, the transition authority may carry out all functions provided for under Section 5-11-3 except for those duties conferred upon the State Department of Audit. If the transition authority does not express an intention in its official minutes of carrying out all functions provided for under Section 5-11-3 within ten (10) days of its creation under law, then it shall have no authority to perform such acts provided for under Section 5-11-3. If the transition authority chooses to perform the functions of Section 5-11-3, it shall do so in strict conformity with the provisions of 5-11-3. If the transition authority chooses not to perform these functions, it may review any plans, procedures or reports required under this chapter, but shall not impede or otherwise interfere with the activities of any agency authorized under law to perform any acts required under this chapter or any other laws of the State of Mississippi.

HISTORY: Laws, 1991, ch. 447, § 3, eff from and after July 1, 1991.

TITLE 7.

EXECUTIVE DEPARTMENT

Chapter 1. Governor. 7-1-1
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CHAPTER 1.

GOVERNOR

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Governor-Elect. 7-1-101
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Division of Federal-State Programs. 7-1-251
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GENERAL PROVISIONS

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7-1-45. Examiner of public accounts.
7-1-47. Compensation of examiner of public accounts.
7-1-49. Commission of examiner of public accounts.
7-1-51. Special audit of county books.
7-1-53. Appointment revocable.
7-1-55. Examiner's report.
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§ 7-1-1. Installation.

When it shall be ascertained who is chosen governor, he shall be installed and the oath of office administered to him by one of the judges of the supreme court or, in their absence, by the presiding officer of one of the two houses of the legislature, in the presence of the two houses. The time of such installation shall be at noon on the first Tuesday following the ascertaining of who is elected governor, or as soon thereafter as practicable, unless a different time be fixed by a concurrent resolution of the two houses.

HISTORY: Codes, 1857, ch. 6, art. 3; 1871, § 96; 1880, § 192; 1892, § 2154; 1906, § 2370; Hemingway's 1917, § 4762; 1930, § 4815; 1942, § 3973.

Cross References — For constitutional provision on governor as chief executive of state, see Miss. Const. Art. 5, § 116.

Constitutional provision for state officers' oath of office, see Miss. Const. Art. 14, § 268.

Provision that a Governor shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

For before whom oath of office is taken, see § 25-1-9.

Where oath of office is to be filed, see § 25-1-11.

Governor's salary, see § 25-3-31.

Governor as chairman of state mineral lease commission, see § 29-7-1.

Governor as chairman of state library board, see § 39-1-1.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Governor §§ 1 et seq.

§ 7-1-3. Private secretary.

The governor may appoint a private secretary, and such others as are provided by law, for service in his office during his term of office, and they shall be under his direction and control. When necessary during the sitting of the legislature, he may appoint an assistant private secretary, who shall receive four dollars ($4.00) a day payable out of the state treasury upon the certificate of the governor.

HISTORY: Codes, Hutchinson's 1848, ch. 18, art. 5 (4); 1857, ch. 6, art. 6; 1871, § 101; 1880, § 193; 1892, § 2155; 1906, § 2371; Hemingway's 1917, § 4763; 1930, § 4816; 1942, § 3974.

§ 7-1-5. Powers generally.

In addition to the powers conferred and duties imposed on the Governor by the constitution and by the laws as elsewhere provided, he shall have the powers and perform the duties following:

(a) He is the supreme executive officer of the state.

(b) He is the commander in chief of the militia of the state and may call out the militia to execute the laws, to suppress insurrections or riots, and to repel invasions.

(c) He shall see that the laws are faithfully executed.

(d) He is to supervise the official conduct of all executive and ministerial officers.

(e) He is to see that all offices are filled and the duties of the offices are performed or, in default thereof, apply such remedy as the law allows; and if the remedy is inadequate, he shall inform the Legislature at its next session.

(f) He shall make appointments and fill vacancies as prescribed by law.

(g) Whenever any suit or legal proceeding is pending that affects the title of the state to any property, or that may result in any claim against the state, he may direct the Attorney General to appear on behalf of the state and protect its interest.

(h) He may require the Attorney General, or district attorney of any district, to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state under the laws of the state.

(i) He may require the Attorney General to aid any district attorney in the discharge of his duties.

(j) He may offer rewards, not exceeding Two Hundred Dollars ($200.00), for persons with mental illness who have escaped and are dangerous, and such other rewards as are authorized by law.

(k) He may require any officer or board to make special reports to him upon demand in writing.

(*l*) He shall transact all necessary business with state officers, shall require them to be present at their respective offices at all reasonable business hours, and may require information, in writing, from any such officer relating to the duties of his office.

(m) When deemed advisable upon proceedings for the arrest in this state of fugitives from justice from other states or countries, he may commission a special officer to arrest the fugitive in any part of the state.

(n) He may bring any proper suit affecting the general public interests, in his own name for the State of Mississippi, if after first requesting the proper officer so to do, the officer refuses or neglects to do the same.

HISTORY: Codes, 1892, § 2156; 1906, § 2372; Hemingway's 1917, § 4764; 1930, § 4817; 1942, § 3975; Laws, 2008, ch. 442, § 3, eff from and after July 1, 2008.

Cross References — Constitutional powers and duties of governor, see Miss. Const. Art. 5, § 116 et seq.

Definition of term "insurrection," see § 1-3-23.

Governor proclaiming rewards for apprehension of absconding criminals, see § 7-1-29.

Provision that there shall be a State Board of Election Commissioners to consist of the Governor, the Secretary of State, and the Attorney General, see § 23-15-211.

Governor's authority to appoint persons to fill vacancies in state or state district offices other than in the Legislature, see § 23-15-831.

Governor's authority to appoint persons to temporarily fill vacancies in the office of U.S. Senator, see § 23-15-855.

Legislature fixing time of governor elect's installation, see § 25-1-7.

Governor granting leave of absence to officers, see § 25-3-61.

Governor's power to remove elective county officials, see §§ 25-5-3 et seq.

Governor's appointment of state tax commission, see §§ 27-3-1 et seq.

Governor's authorization to approve easements for pipe lines, see § 29-1-101.

Collection of funds due from federal government to state for sale of land, see § 29-1-121.

Civil defense powers of governor, see §§ 33-15-11, 33-15-13.

Governor's authorization to close schools, institutions of higher learning, etc., see § 37-65-1.

Governor as ex officio member of Council on Aging, see § 43-7-7.

Governor's authorization to close state parks, see §§ 55-3-101 et seq.

Appointment of members of Business Finance Corporation, see § 57-10-167.

Powers of governor relating to Mississippi Advisory Commission on Nuclear Energy, see § 57-25-7.

Governor as executive head in driver's license compact, see § 63-1-105.

Governor's appointment of employment security commission, see § 71-5-101.

Appointment of members of state board of pharmacy, see § 73-21-75.

Governor appointing board of veterinary examiners, see § 73-39-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Pardon and reprieve.
3. Power of appointment; vacancies.
4. Enforcement of laws.
5. —Calling out militia.

1. In general.

The governor's duties under § 47-5-93 and § 7-1-5(c) and (d) are discretionary and, as such, the governor enjoys a qualified immunity to a civil suit for damages based on the governor's alleged failure to perform his duties under those statutes. McFadden v. State, 542 So. 2d 871, 1989 Miss. LEXIS 65 (Miss. 1989).

Governor may sue only in general public interest. Temple v. State, 123 Miss. 741, 86 So. 580, 1920 Miss. LEXIS 77 (Miss. 1920).

While it has been held by some courts

that the governor may be compelled by mandamus to perform ministerial acts, the overwhelming weight of authority is in favor of the denial of the writ against the governor in any case. Vicksburg & M. R. Co. v. Lowry, 61 Miss. 102, 1883 Miss. LEXIS 79 (Miss. 1883).

2. Pardon and reprieve.

The governor has the full power to pardon under Const. Art 5, § 24, or grant a respite of the sentence of death and fix a later day for the execution. Ex parte Fleming, 60 Miss. 910, 1883 Miss. LEXIS 34 (Miss. 1883).

3. Power of appointment; vacancies.

Code 1906, § 3487 providing deputy may continue to discharge duties of office does not prevent governor from making an emergency appointment. Baker v. Nichols, 111 Miss. 673, 72 So. 1, 1916 Miss. LEXIS 366 (Miss. 1916).

Where deputy sheriff was not qualified elector, death of sheriff created emergency and governor could appoint a successor. State ex rel. Baker v. Nichols, 106 Miss. 419, 63 So. 1025, 1913 Miss. LEXIS 148 (Miss. 1913).

4. Enforcement of laws.

Motion to intervene filed by the Governor of Mississippi, the Mississippi Division of Medicaid, and the Mississippi Health Care Trust Fund could not be set aside for a perceived lack of statutory or legal authority because: (1) the Governor unquestionably had not only the statutory but also the constitutional authority to intervene since the Governor was under a solemn duty to act in order to assure faithful execution of Mississippi's laws; (2) the division had a compelling interest to see that the annual payments of $20 million were placed in the Mississippi Health Care Trust Fund because the suit was initially brought to recoup monies expended by the division; (3) the Mississippi Health Care Trust Fund was authorized to recoup funds paid to a partnership, a non-profit organization created to reduce under age smoking; and (4) the Mississippi Attorney General declined to take action. Hood ex rel. State Tobacco Litigation v. State, 958 So. 2d 790, 2007 Miss. LEXIS 344 (Miss. 2007).

Requirement that Governor shall see that laws are executed means that laws shall be carried into effect, and not arbitrary enforcement by executive of what he considers law. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

Power to enforce laws is not left as a matter of finality in local authorities or local inhabitants, but in head of executive department to act, in case of need, for whole State. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

Governor is executive officer in every county, may set enforcement machinery in motion and thereby determine to whom civil process may be directed for execution when there is failure, neglect, or inability of local officers to act. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

5. —Calling out militia.

National guardsmen, acting under an executive order of the governor, and a search warrant issued by the county judge, directed to any officer of the county, had authority to make a search of the accused's premises wherein a slot machine was found. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

Where the recitals in the executive order, empowering the adjutant general to order out national guardsmen for the purpose of seeing that laws were faithfully executed in Jones County, made out a prima facie case justifying the governor's actions, the duty of showing that there was not such breakdown of law enforcement conditions as to justify this action was upon the accused, who was complaining of the search of his premises wherein a slot machine was found. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

What Governor does in execution of laws, and acts of militia under his authority, must be as civil officers, and in strict subordination to the general law of the land. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

Where Governor unsuccessfully seeks law enforcement through local officers for length of time which makes it clearly apparent that no dependence can be placed in local officers, then, duty arises to send militia, not to supersede but to enforce law. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

Governor's decision as to whether exigency justifies calling out militia, held subject to judicial review. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

Proclamation of Governor ordering out militia need not contain any particular recitals. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

Statute making it obligatory on Governor to call out militia in enumerated cases, held inapplicable, in main, to constitutional and statutory sections which deal with particular and separate subject of execution of the laws. State v. McPhail, 182 Miss. 360, 180 So. 387, 1938 Miss. LEXIS 147 (Miss. 1938).

OPINIONS OF THE ATTORNEY GENERAL

Nothing in general powers enumerated in Miss. Code Section 7-1-5 can be construed to empower Mississippi Governor to exercise legislative prerogative of creating new state office; furthermore, Miss. Code Section 7-1-5 must be read in pari materia with other provisions of law, e.g., Miss. Code Section 5-9-13(6), which states that governmental unit created by executive order after January 3, 1979 "shall not duplicate the functions of other governmental units created by statute." Patterson, Jan. 29, 1993, A.G. Op. #92-1005.

RESEARCH REFERENCES

ALR.

Construction and application, under state law, of doctrine of "executive privilege". 10 A.L.R.4th 355.

Am. Jur.

38 Am. Jur. 2d, Governor §§ 4 et seq.

53 Am. Jur. 2d, Military, and Civil Defense § 30.

63C Am. Jur. 2d, Public Officers and Employees §§ 2,4 et seq.

CJS.

81A C.J.S., States §§ 373–382.

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-1-7. Acceptance of gifts and bequests.

The governor of the state of Mississippi, in his discretion, is hereby authorized and empowered to receive and accept lands, gifts, and bequests for the state of Mississippi for hospitals and other public purposes for and on behalf of any agency or institution thereof.

The various state agencies and governing boards of institutions of the state of Mississippi are hereby authorized and empowered to take the necessary action required of such boards or agencies in order to make possible the receipt and utilization of any grants, gifts, or bequests to the state for such agency or institutions thereof.

HISTORY: Codes, 1942, § 3975.5; Laws, 1954 Ex. ch. 32, §§ 1-3, eff. upon passage, approved Sept. 28, 1954.

Cross References — Objects and purposes to which board of supervisors is authorized to donate for patriot and charitable uses, see § 19-5-93.

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Board of Animal Health can accept donations from private groups for the purposes of training and purchasing equipment and commodities necessary to respond to emergencies. Watson, Feb. 3, 2006, A.G. Op. 06-0005.

§ 7-1-9. Great seal.

The great seal of the state now in use shall be the seal of the state until altered by the legislature, and all official acts of the governor, his approval or disapproval of bills and resolutions passed by the legislature excepted, shall be authenticated by the great seal of the state.

HISTORY: Codes, 1880, § 194; 1892, § 2157; 1906, § 2373; Hemingway's 1917, § 4765; 1930, § 4818; 1942, § 3976.

Cross References — Constitutional provision for great seal of State of Mississippi, see Miss. Const. Art. 5, § 126.

Requirement of commissions to be sealed with great seal of state, see Miss. Const. Art. 5, § 127.

Crime of forgery or counterfeiting of great seal, see § 97-21-47.

RESEARCH REFERENCES

CJS.

81A C.J.S., States § 157.

§ 7-1-11. Records of acts and deposit of laws.

The governor shall cause to be recorded in a suitable book to be kept for that purpose the number and title of every act and joint resolution of the legislature presented to him for his approval. Such record shall show the date of the receipt by him of every such act and resolution, the date of his approval thereof in whole or in part, if he approve the same, and the date of his return of any such act or resolution with his objections thereto, if such return thereof be made. He shall cause all acts and joint resolutions which have become laws, or have taken effect by his approval or otherwise, to be deposited in the office of the secretary of state without delay.

HISTORY: Codes, 1892, § 2180; 1906, § 2397; Hemingway's 1917, § 4790; 1930, § 4819; 1942, § 3977.

§ 7-1-13. Business with the United States government.

The governor shall transact all the business of the state, civil and military, with the United States government or with any other state or territory, except in cases otherwise specially provided by law.

HISTORY: Codes, 1892, § 2181; 1906, § 2398; Hemingway's 1917, § 4791; 1930, § 4820; 1942, § 3978.

RESEARCH REFERENCES

CJS.
81A C.J.S., States §§ 78–97, 101–104, 108, 109.

§ 7-1-15. Transmission of laws and documents.

The governor shall cause to be transmitted to the executive of each state of the United States, to the library of congress, and to the proper authority of the governments of Canada and Mexico, copies of the laws, journals, reports, and documents printed by order of the legislature. He shall receive such books and publications as may be transmitted in return, and cause the same to be deposited in the state library.

HISTORY: Codes, Hutchinson's 1848, ch. 18, art. 8 (1); 1857, ch. 6, art. 8; 1871, § 104; 1880, § 196; 1892, § 2160; 1906, § 2376; Hemingway's 1917, § 4768; 1930, § 4821; 1942, § 3979.

Cross References — Secretary of state distributing acts and journals of legislature, see § 1-5-7.

§ 7-1-17. Commissioners for other states.

The governor may appoint one or more commissioners, residing in each of the states and territories of the United States and in the District of Columbia or in any foreign country, who shall hold their office for the term of four years from the date of their commissions. They shall have full power to administer oaths and affirmations, to take and certify depositions and affidavits to be used in this state, and to take and certify the acknowledgment and proof of all instruments of writing to be recorded in this state; and their acts shall be as effectual in law as if done and certified by any officer thereunto duly authorized in this state. Before any commissioner so appointed shall proceed to perform any of the duties of his office, he shall take and subscribe an oath, before an officer authorized to administer oaths in the state or county for which such commissioner may be appointed, that he will faithfully discharge all the duties of the office, which oath shall be filed in the office of the secretary of state within six months after the taking and subscribing of the same.

HISTORY: Codes, Hutchinson's 1848, ch. 60, art. 17 (1); 1857, ch. 61, art. 244; 1871, § 800; 1880, § 1640; 1892, § 2181; 1906, 2399; Hemingway's 1917, § 4792; 1930, § 4822; 1942, § 3980.

Cross References — Governor appointing notaries public for each county, see § 25-33-1.

Acknowledgment or proof of conveyance of land or personal property made in another state, see § 89-3-9.

§ 7-1-19. Investigators of crime.

For the purpose of seeing that the laws are faithfully executed and for the purpose of suppressing crimes of violence and acts of intimidation and terror, the governor is hereby authorized to employ such investigators and other qualified personnel as he may deem necessary to make investigation of crimes of violence and acts of terrorism or intimidation, and to aid in the arrest and prosecution of persons charged with such crimes of violence, acts of terrorism or intimidation, or threats of violence. Such investigators and other personnel so employed by the governor shall have full power to investigate, apprehend, and arrest persons committing acts of violence, intimidation, or terrorism anywhere in the state, and shall be vested with the power of police officers in the performance of such duties as set out herein. Such investigators and other personnel shall perform their duties under the direction of the governor. Each such regularly employed investigator shall enter into an official bond in the sum of Two Thousand Five Hundred Dollars ($2,500.00) for the faithful performance of his duties, the bond premiums to be paid by the governor out of the appropriations made for the enforcement of the provisions of Sections 7-1-19 through 7-1-23. Said bonds shall be kept by the governor without a public record of same being required.

The governor shall also be authorized to employ, upon a temporary basis from time to time, such additional investigators and other personnel as he may deem necessary to carry out the purposes of the cited sections, who may not be required to give bond.

The governor shall be authorized to offer and pay suitable rewards to other persons for aiding in such investigation and in the apprehension and conviction of persons charged with acts of violence, or threats of violence, or intimidation, or acts of terrorism.

HISTORY: Codes, 1942, § 3980.5; Laws, 1947, 2nd Ex. ch. 2, §§ 1-4.

RESEARCH REFERENCES

ALR.

Liability of one hiring private investigator or detective for tortious acts committed in course of investigation. 73 A.L.R.3d 1175.

§ 7-1-21. Powers and duties of investigators of crime.

Investigators and other personnel, employed by the governor pursuant to Section 7-1-19, shall have full power to investigate, apprehend, or arrest any person, firm, corporation, or any combination or conspiracy thereof committing said acts of violence, or threats of violence, or intimidations, or acts of terror, or damaging, injuring, or destroying property as a result of acts of violence or terror, in any manner whatever, and to help indict or prosecute, or both, in all such cases. Such investigators or other personnel so employed by the governor, in the performance of their duties under Sections 7-1-19 through 7-1-23, are authorized and empowered to carry firearms and to serve warrants and subpoenas issued under the authority of the state of Mississippi; to make arrests without warrant in such cases where the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of any of the offenses herein named and there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer; to acquire, collect, classify, and preserve records and evidence obtained hereunder; and to make all lawful searches and seizures to obtain evidence of such acts, when based upon reasonable grounds or probable cause that such is necessary in the accomplishment of the purposes of the aforesaid sections.

HISTORY: Codes, 1942, § 3980.5; Laws, 1947, 2nd Ex. ch. 2, §§ 1-4.

RESEARCH REFERENCES

ALR.

Liability of one hiring private investigator or detective for tortious acts committed in course of investigation. 73 A.L.R.3d 1175.

Propriety of search of nonoccupant visitor's belongings pursuant to warrant issued for another's premises. 51 A.L.R.5th 375.

Admissibility of evidence discovered in search of adult defendant's property or residence authorized by defendant's minor child – state cases. 51 A.L.R.5th 425.

CJS.

81A C.J.S., States §§ 373–382.

§ 7-1-23. Compensation of investigators of crime.

The governor shall fix the compensation and travel and expense allowances to be paid investigators and other persons employed under the provisions of Sections 7-1-19 through 7-1-23, and shall furnish such investigators with such weapons, equipment, materials, articles, and supplies as may be necessary, suitable, and desirable to enable such investigators and other persons to discharge and carry out the duties imposed on them under the provisions of said sections. All expenses incurred hereunder shall be paid out of such funds as are specifically appropriated for the purposes hereof.

HISTORY: Codes, 1942, § 3980.5; Laws, 1947, 2nd Ex. ch. 2, §§ 1-4.

RESEARCH REFERENCES

ALR.

Liability of one hiring private investigator or detective for tortious acts committed in course of investigation. 73 A.L.R.3d 1175.

CJS.

81A C.J.S., States §§ 313–315.

§ 7-1-25. Arrest and delivery of fugitives from justice.

(1) It shall be the duty of the governor, on demand made by the executive authority of any other state, territory or district for any person charged, on affidavit or indictment in such other state, territory or district, with a criminal

offense and who shall have fled from justice and be found in this state, the demand being accompanied with a copy of the affidavit or indictment certified as authentic by such executive authority, to cause the offender to be arrested and delivered up to the authority of such state, territory or district for removal to the jurisdiction having cognizance of the offense, upon payment of the costs and expenses consequent on arrest; and it shall be the duty of the governor to demand and receive fugitives from justice for offenses committed in this state.

(2) The governor may also surrender, on demand of the executive authority of any other state, any person to be found in this state who stands charged in the manner provided in subsection (1) of this section with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand.

HISTORY: Codes, 1857, ch. 64, art. 361; 1871, § 2868; 1880, § 198; 1892, § 2162; 1906, § 2378; Hemingway's 1917, § 4770; 1930, § 4823; 1942, § 3981; Laws, 1983, ch. 389, eff from and after July 1, 1983.

Cross References — Listing of powers of governor, see § 7-1-5.

Offenses concerning aiding escape of prisoners, see §§ 97-9-27 et seq.

Issuance of warrant for arrest of fugitives from justice from other states, see § 99-21-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Power and duties of governor.
3. Review.

1. In general.

Section 7-1-25(2) addresses situations where an act is committed in either Mississippi or in a third state which intentionally results in a crime in the demanding state, and applies to persons who are "non-fugitives," i.e., persons who are not present in the demanding state when the intentional act was performed but whose acts result in a crime in the demanding state; § 7-1-25(2) recognizes the theory of "constructive presence" wherein a person can commit a crime in a demanding state without actually being physically present in that state. State v. McCurley, 627 So. 2d 339, 1993 Miss. LEXIS 510 (Miss. 1993).

Extradition is not intended as a preliminary inquiry into the merits of a criminal prosecution, but instead is a summary executive proceeding by which a criminal accused can be brought before the appropriate tribunal for adjudication. State v. McCurley, 627 So. 2d 339, 1993 Miss. LEXIS 510 (Miss. 1993).

Filing of extradition proceedings and granting of extradition by asylum state constitutes prima facie case on behalf of state that it is entitled to extradition; controversy over specific date of alleged crime is question to be litigated in judiciary of demanding state. Allen v. State, 515 So. 2d 890, 1987 Miss. LEXIS 2873 (Miss. 1987).

Introduction of Governor's extradition warrant creates presumption that all requirements for extradition have been met. Allen v. State, 515 So. 2d 890, 1987 Miss. LEXIS 2873 (Miss. 1987).

No particular form of authentication of extradition papers is required. Keller v. State, 246 Miss. 436, 150 So. 2d 426, 1963 Miss. LEXIS 461 (Miss. 1963).

Either the indictment or judgment of conviction, properly authenticated, should be a part of the demanding papers and in the possession of the governor of the asylum state prior to the issuance of the extradition warrant. Loper v. Dees, 210 Miss. 402, 49 So. 2d 718, 1951 Miss. LEXIS 274 (Miss. 1951).

The Massachusetts statutes relating to

habeas corpus, and those relating to interstate rendition, are "not applicable to interstate extradition except to the extent that they may be in aid of, and not inconsistent with, the Constitution and laws of the United States on the question." Loper v. Dees, 210 Miss. 402, 49 So. 2d 718, 1951 Miss. LEXIS 274 (Miss. 1951).

State statutes and decisions relating to habeas corpus and extradition are not applicable to interstate extradition except to extent that they may be in aid of, and not inconsistent with, the Constitution and laws of United States on the question. Bishop v. Jones, 207 Miss. 438, 42 So. 2d 421 (1949).

Decree of court in habeas corpus proceedings adjudging extradition proceedings to be insufficient both in form and substance but providing for discharge of relator unless within a stated period of time the sheriff should be served with a proper, legal and sufficient extradition warrant based upon proper, legal and sufficient papers and proceedings, violated accused's constitutional right to have the trial judge as a judicial officer to not only pass upon the sufficiency of the extradition proceedings then before the court but also the sufficiency of any such papers that were to be thereafter supplied in their stead. Bishop v. Jones, 207 Miss. 438, 42 So. 2d 421 (1949).

If the governor's warrant of extradition and all of the requisition papers are sufficient in form and substance they may be introduced at the hearing on habeas corpus to constitute a prima facie right on the part of the respondent to surrender the alleged defendant to the demanding state, but relator may nevertheless introduce proof before the court where the habeas corpus petition is being heard to show that he was not in the demanding state at the time of the commission of the alleged crime. Bishop v. Jones, 207 Miss. 438, 42 So. 2d 421 (1949).

The two indispensable prerequisites to the right of the governor of the asylum state to surrender an alleged offender to the authorities of the demanding state are: first, that such governor be furnished with a copy of an indictment found by a grand jury or an affidavit made before a magistrate of the demanding state or territory, charging the person demanded with the commission of the alleged crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled; and, second, that the governor of the asylum state must be satisfied, either from an inquiry conducted by him at his option or on the basis of the prima facie presumption carried by the regularity of the extradition proceedings, that the alleged offender is a fugitive from justice of the demanding state, that is, that he was in the demanding state at the time of the commission of the alleged crime and has departed therefrom into the state where he is found. Bishop v. Jones, 207 Miss. 423, 38 So. 2d 920, 42 So. 2d 421, 1949 Miss. LEXIS 353 (Miss.), op. withdrawn, different results reached on reconsid., 207 Miss. 423, 42 So. 2d 421, 1949 Miss. LEXIS 352 (Miss. 1949).

The judges of the Supreme Court cannot, while an appeal is pending from the chancellor's decision on habeas corpus after arrest on executive warrant after extradition, admit a fugitive to bail. Ex parte Wall, 84 Miss. 783, 38 So. 628, 1904 Miss. LEXIS 101 (Miss. 1904).

Where relator is arrested for crime committed in another state upon the warrant of the governor of this state authorizing extradition, the guilt or innocence of the relator cannot be inquired into on habeas corpus in this state. Ex parte Devine, 74 Miss. 715, 22 So. 3, 1897 Miss. LEXIS 73 (Miss. 1897), limited, Ex parte Edwards, 91 Miss. 621, 44 So. 827, 1907 Miss. LEXIS 153 (Miss. 1907).

2. Power and duties of governor.

The power of the executive to extradite fugitives from justice is conferred and the conditions of its exercise are prescribed by this section and must be strictly executed and all prescribed formalities observed. Ex parte Devine, 74 Miss. 715, 22 So. 3, 1897 Miss. LEXIS 73 (Miss. 1897), limited, Ex parte Edwards, 91 Miss. 621, 44 So. 827, 1907 Miss. LEXIS 153 (Miss. 1907).

3. Review.

Where an Arkansas merchant filed criminal charges against a Mississippi defendant for theft of property, a writ of extradition was issued, and defendant's habeas corpus petition was denied, defendant was entitled to another hearing, since he was not allowed to put into evidence the proof that he offered at the habeas hearing, to rebut the prima facie case established by the rendition warrant and the other extradition documents, in an attempt to demonstrate that the documents were not on their face in order. Sonkin v. State, 824 So. 2d 564, 2002 Miss. LEXIS 195 (Miss. 2002).

In habeas corpus proceedings questioning the sufficiency of a requisition for extradition, the admission by appellant of his indictment and conviction for rape in a sister state cures the defect of the omission of indictment or judgment of conviction being attached to the demanding papers from the governor of sister state. Loper v. Dees, 210 Miss. 402, 49 So. 2d 718, 1951 Miss. LEXIS 274 (Miss. 1951).

The decision of the governor of the asylum state, when holding the extradition proceedings to be sufficient in form and substance as a jurisdictional prerequisite to granting relief to the demanding state, is subject to review in a habeas corpus proceeding brought by the accused. Bishop v. Jones, 207 Miss. 438, 42 So. 2d 421 (1949).

Upon judicial review on habeas corpus with respect to extradition of an alleged fugitive from justice of the demanding state, relator may introduce proof to show that he was not in the demanding state at the time of the commission of the alleged crime, and that he could not therefore be a fugitive from the justice of such state. Bishop v. Jones, 207 Miss. 438, 42 So. 2d 421 (1949).

RESEARCH REFERENCES

ALR.

Determination, in extradition proceedings, or on habeas corpus in such proceedings, whether a crime is charged. 40 A.L.R.2d 1151.

Necessity and sufficiency of identification of accused as the person charged, to warrant extradition. 93 A.L.R.2d 912.

Discharge on habeas corpus of one held in extradition proceeding as precluding subsequent extradition proceedings. 33 A.L.R.3d 1443.

Necessity that demanding state show probable cause to arrest fugitive in extradition proceedings. 90 A.L.R.3d 1085.

Am. Jur.

31A Am. Jur. 2d, Extradition §§ 1 et seq.

CJS.

35 C.J.S., Extradition §§ 1 et seq.

Lawyers' Edition.

Interstate extradition: Supreme Court's construction of Federal Constitution's Extradition Clause (Art IV, sec. 2, cl 2) and of Extradition Act (18 USCS sec. 3182, and similar provisions). 96 L. Ed. 2d 750.

§ 7-1-27. Duty to notify executive of other state.

Upon being informed by any conservator of the peace of the commitment or admission to bail of any person in this state charged with treason, felony, or other crime in some other state or territory, the governor shall forthwith communicate the information to the executive of the state or territory in which the offense is charged to have been committed.

HISTORY: Codes, 1880, § 3123; 1892, § 2163; 1906, § 2379; Hemingway's 1917, § 4771; 1930, § 4824; 1942, § 3982.

RESEARCH REFERENCES

ALR.

Determination, in extradition proceedings, or on habeas corpus in such proceedings, whether a crime is charged. 40 A.L.R.2d 1151.

Necessity and sufficiency of identification of accused as the person charged, to warrant extradition. 93 A.L.R.2d 912.

Discharge on habeas corpus of one held in extradition proceeding as precluding subsequent extradition proceedings. 33 A.L.R.3d 1443.

Necessity that demanding state show probable cause to arrest fugitive in extradition proceedings. 90 A.L.R.3d 1085.

Lawyers' Edition.

Interstate extradition: Supreme Court's construction of Federal Constitution's Extradition Clause (Art IV, § 2, cl 2) and of Extradition Act (18 USCS § 3182, and similar provisions). 96 L. Ed. 2d 750.

§ 7-1-29. Rewards for absconding criminals.

Whenever the governor shall be of opinion that the public good requires it, he is authorized to offer, by proclamation or in such other manner as he may deem advisable, such reward as he may think the nature of the case requires, not exceeding Two Thousand Dollars ($2,000.00), for the apprehension and arrest of any person who has committed any atrocious offense against the criminal laws, to be paid in no instance until the offender is delivered to the civil authority of the county where the offense was committed, and confined in jail or admitted to bail; or the reward may be conditioned to be paid only upon conviction.

HISTORY: Codes, 1892, § 2164; 1906, § 2380; Hemingway's 1917, § 4772; 1930, § 4825; 1942, § 3983.

Cross References — Listing of powers of governor, see § 7-1-5.
Reward for arrest and conviction of livestock or poultry thieves, see § 69-29-203.
Statutory reward for arrest of fleeing homicides, see § 99-3-35.
Officers entitled to statutory reward for arrest of fleeing homicides, see § 99-3-37.

§ 7-1-31. Agent to bring absconding offender from other states.

The governor may appoint an agent to demand of the executive authority of any other state or territory any fugitive from justice or other person charged with treason, felony, or other crime in this state. Such agent, if necessary, may employ a sufficient guard or escort to bring such criminal to this state; and the governor may contract other expenses absolutely required in performing the duties of the agency.

HISTORY: Codes, 1892, § 2165; 1906, § 2381; Hemingway's 1917, § 4773; 1930, § 4826; 1942, § 3984.

Cross References — Compensation to be paid to persons bringing back prisoner on extradition, see § 25-7-71.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Expenses.

1. In general.

The Massachusetts statutes relating to habeas corpus, and those relating to interstate rendition, are "not applicable to interstate extradition except to the extent that they may be in aid of, and not inconsistent with, the Constitution and laws of the United States on the question." Loper v. Dees, 210 Miss. 402, 49 So. 2d 718, 1951 Miss. LEXIS 274 (Miss. 1951).

In habeas corpus proceedings questioning the sufficiency of a requisition for extradition, the admission by appellant of his indictment and conviction for rape in a sister state cures the defect of the omission of indictment or judgment of conviction being attached to the demanding papers from the governor of sister state. Loper v. Dees, 210 Miss. 402, 49 So. 2d 718, 1951 Miss. LEXIS 274 (Miss. 1951).

Even though one who is a sheriff should be appointed as special agent as provided in this section, he acts not as sheriff under his bond but as special agent to extradite, at least until he has the prisoner in his custody in his own county. McLean v. Mississippi, 96 F.2d 741, 1938 U.S. App. LEXIS 3552 (5th Cir. Miss.), cert. denied, 305 U.S. 623, 59 S. Ct. 84, 83 L. Ed. 399, 1938 U.S. LEXIS 805 (U.S. 1938), disapproved, Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 60 S. Ct. 153, 84 L. Ed. 167, 1939 U.S. LEXIS 77 (U.S. 1939).

2. Expenses.

In respect to mileage allowances and other expenses incurred by a person appointed as agent of the Governor to return fugitives from another state, such person is not acting as an officer of the court even though he is a sheriff or deputy sheriff. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

The only matters into which the circuit court may inquire on petition for mileage and other expenses, under this section [Code 1942, § 3984] and Code 1942, § 3964, incurred by Governor's agent in returning fugitives from another state, are whether the requisition was issued and the fugitives returned, the actual mileage from the place of arrest in the other state to the point of delivery, the reasonable expenses of feeding and lodging the fugitives, the reasonable expenses of the guard along by the executive agent, and other reasonably essential expenses incidentally necessary to executing the warrant of requisition. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

Governor's agent who, pursuant to his appointment, returned fugitives charged with kidnapping, could not recover from the county either for expenses of the victim, who went along with him, or those of himself personally in addition to the mileage allowed him. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

Code 1942, § 3965 does not supersede this section [Code 1942, § 3984] or Code 1942, § 3964, but supplements them by providing, on a proper showing in advance for the necessity thereof, an allowance in addition to the expenses of the executive agents, extra guards, and expenses in maintenance of the guard and prisoners, and other incidental expenses inherent in this section and § 3964. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

Code 1942, § 3965 is inapplicable as to a petition in circuit court against the county by Governor's agent for allowance of mileage, and other expenses, under this section [Code 1942, § 3984] and Code 1942, § 3964, for returning fugitives. Kitchens v. Union County, 198 Miss. 403, 22 So. 2d 356, 1945 Miss. LEXIS 211 (Miss. 1945).

§ 7-1-33. Suits in foreign jurisdiction.

The governor may order and direct suits to be brought for and in the name of the state in any other state or foreign jurisdiction for the recovery of any moneys due or owing to the state, or upon any claim or demand on which the state is entitled to sue. For the prosecution of such suits he may employ counsel and, for such sum as is necessary to pay the costs or expenses thereof, order the auditor to draw a warrant on the treasury, payable out of any sum appropriated for the purpose.

HISTORY: Codes, 1892, § 2167; 1906, § 2383; Hemingway's 1917, § 4775; 1930, § 4827; 1942, § 3985.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Governor engaging counsel to assist the attorney general, see § 7-5-7.

§ 7-1-35. Appointment of officers.

The governor shall fill by appointment, with the advice and consent of the senate, all offices subject to such appointment when the term of the incumbent will expire within nine months after the meeting of the legislature, and also vacancies in such offices occurring from any cause during the session of the senate or during the vacation of that body. All such appointments to offices made in vacation shall be reported to the senate within ten days after the commencement of the session of that body for its advice and consent to the appointment, and the vacancy shall not be filled if caused by the senate's refusal to confirm any appointment or nomination, or if it do not occur during the last five days of the session, by the appointment of the governor in the vacation of the senate, without its concurrence. Any appointment in vacation to which the senate shall refuse to consent shall be thereby annulled from that date, but the acts of the appointee prior thereto shall not be affected thereby.

HISTORY: Codes, 1871, § 106; 1880, § 199; 1892, § 2168; 1906, § 2384; Hemingway's 1917, § 4776; 1930, § 4828; 1942, § 3986; Laws, 1886, p. 161.

Cross References — Governor's appointment of county prosecuting attorney, see § 19-23-7.

First meeting of municipal officers after receipt of commission from secretary of state, see § 21-1-25.

Filling of vacancies where officer fails to qualify, see § 25-1-7.

Vacancy of office by removal or by default, see § 25-1-59.

Removals from office, see § 25-5-1.

JUDICIAL DECISIONS

1. In general.

An assistant chief inspector of the Mississippi Marine Conservation Commission whose appointment was never submitted to or confirmed by the Senate as required by statute, was at most a de facto officer for the two years he worked for the Commission in that capacity, and when he was discharged by an order of the Commission, the Commission merely terminated the de facto status which required no action by the Governor or any hearing to remove the officer from an office he did not validly hold. Mississippi Marine Conservation Com. v. Misko, 347 So. 2d 355, 1977 Miss. LEXIS 2038 (Miss. 1977).

When the office of chancellor has been filled by appointment in vacation of the senate and the appointee accepts, the whole power of the governor is exhausted; he cannot afterward remove the appointee and leave the office vacant or make room for another person. Brady v. Howe, 50 Miss. 607, 1874 Miss. LEXIS 100 (Miss. 1874).

OPINIONS OF THE ATTORNEY GENERAL

Failure of state Senate to affirmatively act to confirm appointment properly before it constitutes refusal to consent under applicable statute; thus, appointment is annulled, and office becomes vacant. White, April 18, 1991, A.G. Op. #91-0289.

No provision in Sections 7-1-35 or 47-5-24 provide for an interim appointment of a Commissioner of Corrections. The statutes make no distinction between an interim appointment and a permanent appointment and, in fact, do not contemplate two different types of appointment. Smith, February 16, 1995, A.G. Op. #95-0067.

The failure of the Senate to confirm an appointment constitutes a refusal to consent to the appointment. Under the provisions of Section 7-1-35 the appointment is therefore annulled from that date. Gordon, March 27, 1996, A.G. Op. #96-0214.

The Governor cannot reappoint the same four candidates at the end of the legislative session and have them serve until the 1997 Regular Session of the Legislature. Such a course of action would run afoul of Section 7-1-35. Gordon, March 27, 1996, A.G. Op. #96-0214.

Vacation appointments of members of the board of directors of the Health Care Trust Fund by the Governor, but returned by the Senate, were annulled, and these persons were no longer members of the board of directors and could not serve as such until their successors were appointed and confirmed. Bennett, Jan, 18, 2000, A.G. Op. #2000-0030.

Where a vacancy on the Mississippi Commission on Wildlife, Fisheries and Parks occurred during the session and not during the last five days of the session, the vacancy could not be filled by the governor's appointment during the vacation of the senate. McArthur, III, Apr. 26, 2002, A.G. Op. #02-0241.

Persons nominated for membership on the Mississippi Board of Medical Licensure, whose names were returned by the Senate to the Governor, are no longer members of the board and may not serve in any capacity as board members. Burnett, Feb. 13, 2004, A.G. Op. 04-0063.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 2,4 et seq.

CJS.

67 C.J.S., Officers §§ 36 et seq.

81A C.J.S., States §§ 271–290.

§ 7-1-37. Senate convened in vacation of legislature.

The governor may convene the senate in the vacation of the legislature for concurrence in appointments by giving ten days' notice thereof by proclamation by mail to each of the senators.

HISTORY: Codes, 1880, § 200; 1892, § 2169; 1906, § 2386; Hemingway's 1917, § 4778; 1930, § 4829; 1942, § 3987.

Cross References — Organization of senate, see § 5-1-13.

§ 7-1-39. Vacancies in municipal elective offices.

In the event of the death, resignation, or removal from office of the mayor and board of aldermen or commissioners, or a majority of the aldermen or commissioners, so that said vacancies cannot be filled as now provided by law, it shall be the duty of the governor to fill such vacancies by appointment for the unexpired term where such unexpired term is less than six months, and if more than six months, until an election can be held as now provided by law to fill such vacancies.

HISTORY: Codes, 1930, § 4830; 1942, § 3988; Laws, 1926, ch. 269.

Cross References — How mayor and councilmen are elected, see § 21-5-5.
Filling of vacancies where officer fails to qualify, see § 25-1-7.

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 2,4 et seq.

CJS.
67 C.J.S., Officers §§ 97, 106-119, 129.
81A C.J.S., States §§ 169, 170.

§ 7-1-41. Superintendent of auditor's and treasurer's offices.

The governor shall superintend the offices of the treasurer and auditor of public accounts, and may at any time make a personal inspection of all the books, vouchers, and other official papers in said offices. If he shall at any time discover or have reason to suspect that either of said officers has been guilty of any embezzlement, peculation, defalcation, or fraud in his office, he shall forthwith suspend said officer from office and shall cause legal proceedings to be instituted against him. He shall make a temporary appointment to fill such office until the officer so suspended shall be acquitted of the charge against him, and the officer so suspended shall not receive any salary during the period of his suspension, unless he shall be acquitted.

HISTORY: Codes, Hutchinson's 1848, ch. 18, art. 5 (6); 1857, ch. 6, art. 7; 1871 § 103; 1880, § 195; 1892, § 2158; 1906, § 2374; Hemingway's 1917, § 4766; 1930, § 4832; 1942, § 3990; Laws, 1978, ch. 458, § 6, eff from and after January 1, 1980.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — State treasurer reporting to governor, see § 7-9-49.

§ 7-1-43. To verify funds in the treasury.

It shall be the duty of the governor, at least three times a year and oftener if he sees fit, at such times as he may deem proper, to go to the treasury without giving notice to the treasurer, to verify the cash balance as shown by the books, and to publish the fact that he has done so, stating whether the amount called for by the books be actually in the treasury and whether the treasurer had any notice whatever that the verification would be made. He shall verify the count of the funds in the treasury and certify to the statements of the treasurer, if true, showing the condition of the treasury in the months of January and July of each year, as required by section 137 of the constitution.

HISTORY: Codes, 1892, § 2159; 1906, § 2375; Hemingway's 1917, § 4767; 1930, § 4833; 1942, § 3991.

Cross References — Governor and treasurer counting depository receipts as cash, see § 27-105-31.

§ 7-1-45. Examiner of public accounts.

The governor is authorized, when he deems it proper, to appoint an expert accountant whose duty it shall be, under the direction of the governor, to audit and examine the books, accounts, and vouchers of all officers, state or county, or of any of the state educational, charitable, or reformatory institutions, or of the officers thereof, or of any other institution supported in whole or in part by the state.

HISTORY: Codes, 1892, § 2171; 1906, § 2388; Hemingway's 1917, § 4780; 1930 § 4834; 1942, § 3992.

JUDICIAL DECISIONS

1. In general.

That examiner of accounts is appointed for certain county does not affect validity of appointment. Jackson County v. Neville, 131 Miss. 599, 95 So. 626, 1923 Miss. LEXIS 206 (Miss. 1923).

Constitutionality of law under which governor appointed auditor to audit books of county official should be raised on allowance of his account for services. Neville v. Adams County, 123 Miss. 413, 86 So. 261, 1920 Miss. LEXIS 36 (Miss. 1920).

§ 7-1-47. Compensation of examiner of public accounts.

The governor shall have power to direct and control the examiner and, when he deems it necessary, may require him to examine the accounts of any state or county officer charged with the duty of collecting or disbursing any part of the public revenue. He shall fix compensation at not exceeding seven dollars a day while actually employed, the examiner to pay his own expenses; and the governor shall prescribe the time for which he shall be employed.

HISTORY: Codes, 1892, § 2172; 1906, § 2389; Hemingway's 1917, § 4781; 1930, § 4835; 1942, § 3993.

JUDICIAL DECISIONS

1. In general.

Examiner of accounts cannot be allowed more than $7 a day or anything for services of assistants. Jackson County v. Neville, 131 Miss. 599, 95 So. 626, 1923 Miss. LEXIS 206 (Miss. 1923).

§ 7-1-49. Commission of examiner of public accounts.

A commission shall issue to the examiner, vesting in him authority to do and perform the duties for which he may be appointed. He shall have authority to issue subpoenas for witnesses whom he may wish to examine, administer oaths to them, and to compel their attendance; and shall have full authority to require officers whose books and accounts are being examined, and their deputies and clerks, to render him assistance and give him information needed in the prosecution of his investigations. The examiner shall have the same power to punish a witness who fails or refuses to attend and testify before him as conferred by law on justices of the peace; and an officer, his deputy or clerk, failing to give assistance or information to the examiner when required shall be punished as for a failure or refusal to perform official duty.

HISTORY: Codes, 1892, § 2173; 1906, § 2390; Hemingway's 1917, § 4782; 1930, § 4836; 1942, § 3994.

Cross References — Subpoenas and the examiner of public accounts, see Miss. R. Civ. P. 45.

JUDICIAL DECISIONS

1. In general.

To recover for services examiner of accounts must allege and prove issuance and delivery of commission. Jackson County v. Neville, 131 Miss. 599, 95 So. 626, 1923 Miss. LEXIS 206 (Miss. 1923).

§ 7-1-51. Special audit of county books.

Where an expert accountant is appointed by the governor to audit the books and accounts of county officers of any county and the accountant so appointed shall perform services under such appointment in auditing the books of any county officers, such accountant shall submit his bill for services, itemized, to the circuit judge of the district, whose duty it shall be to approve the same if found correct and reasonable. Thereupon said account, with a copy of the order of the judge or court, shall be sent to the governor for his approval, who, if he shall find the same correct and reasonable, shall approve the same; and thereupon it shall be the duty of the board of supervisors of the county, the books of whose offices are audited, to allow said account. The clerk of the board shall then issue a warrant for the same on the county depository as in other cases, provided that this section shall apply only to cases where the governor has been petitioned by 25 per cent of the qualified electors of the county to appoint an accountant.

HISTORY: Codes, Hemingway's 1917, § 4783; 1930, § 4837; 1942, § 3995; Laws, 1914, ch. 241.

JUDICIAL DECISIONS

1. In general.

Not sufficient to approve accountant's bill as reasonable only. Jackson County v. Neville, 131 Miss. 599, 95 So. 626, 1923 Miss. LEXIS 206 (Miss. 1923).

Hearing on bill of accountant appointed by governor not a judicial proceeding, and due process was not required. Jackson County v. Neville, 131 Miss. 599, 95 So. 626, 1923 Miss. LEXIS 206 (Miss. 1923).

Finding of governor as to sufficiency of petition to appoint accountant, and finding of governor and circuit judge as to reasonableness of bill for examination of accounts, held not subject to review. Jackson County v. Neville, 131 Miss. 599, 95 So. 626, 1923 Miss. LEXIS 206 (Miss. 1923).

Statute held not to authorize appointment of accountant in case not previously authorized. Jackson County v. Neville, 131 Miss. 599, 95 So. 626, 1923 Miss. LEXIS 206 (Miss. 1923).

Constitutionality of law under which governor appointed auditor to audit books of county officials should be raised on allowance of his account for services. Neville v. Adams County, 123 Miss. 413, 86 So. 261, 1920 Miss. LEXIS 36 (Miss. 1920).

§ 7-1-53. Appointment revocable.

The appointment of the examiner is revocable at the discretion of the governor, and the governor may at pleasure appoint a successor. If the exigencies of the public service require it, the governor may appoint two or more examiners.

HISTORY: Codes, 1892, § 2174; 1906, § 2391; Hemingway's 1917, § 4784; 1930, § 4838; 1942, § 3996.

§ 7-1-55. Examiner's report.

The examiner shall make report to the governor, under oath, of the result of any examination he may be required to make, and show therein the true condition and state of the books and accounts examined at the time of his examination. Such reports shall be public records.

HISTORY: Codes, 1892, § 2175; 1906, § 2392; Hemingway's 1917, § 4785; 1930, § 4839; 1942, § 3997.

§ 7-1-57. Defaulting state treasurer and tax collectors suspended.

Whenever it shall be credibly alleged to the governor that the state treasurer or any tax collector is a defaulter, the governor shall direct the examiner forthwith to examine the records, books, and accounts of such treasurer or tax collector and, as soon as practicable, to report the condition of such officer's accounts. If the report show such officer to be a defaulter or short in his accounts, the governor shall at once suspend him and appoint some other person to perform the duties of the office pending the investigation of his account.

HISTORY: Codes, 1892, § 2176; 1906, § 2393; Hemingway's 1917, § 4786; 1930, § 4840; 1942, § 3998.

Cross References — Constitutional provision permitting governor to suspend defaulting state treasurers and tax collectors, see Miss. Const. Art. 5, § 125.

Clerk of board of supervisors being required to report defaulting officers to the grand jury, see § 19-17-19.

Vacancy of office by removal or by default, see § 25-1-59.

Publishing of list of defaulting public officers, see § 25-1-63.

Defaulting member of state tax commission, see § 27-3-45.

Notice to district attorney of default of tax collector, see § 27-29-17.

Suspension of tax collector who fails to make report to auditor of public accounts and clerk of the board of supervisors, see § 27-29-25.

Removal of tax collector for failure to make monthly payment or final settlement, see § 97-11-47.

§ 7-1-59. Court proceedings to be instituted.

If the examiner report the state treasurer or any tax collector to be a defaulter, it shall be the duty of the governor to notify the attorney general in case of the state treasurer, or the proper district attorney in case of a county officer, of the facts and require him to institute proper proceedings in court for the investigation of such account and the judicial determination of the status thereof.

HISTORY: Codes, 1892, § 2177; 1906, § 2394; Hemingway's 1917, § 4787; 1930, § 4841; 1942, § 3999.

Cross References — Attorney general bringing suit on bond of state treasurer, see § 7-9-51.

§ 7-1-61. Duty in respect to defaulter.

The governor shall have the power, and it is his duty, to suspend alleged defaulting tax collectors pending the investigation of their respective accounts, whether made under the foregoing sections or otherwise, and to make temporary appointments of proper persons to fill the offices while such investigations are being made.

HISTORY: Codes, 1892, § 2170; 1906, § 2387; Hemingway's 1917, § 4779; 1930, § 4842; 1942, § 4000.

Cross References — Constitutional powers of governor concerning defaulters, see Miss. Const. Art. 5, § 125.

Defaulting member of state tax commission, see § 27-3-45.

Removal of tax collector for failure to make monthly payment or final settlement, see § 97-11-47.

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory authority for a board of supervisors to continue to pay a suspended tax collector where no services will be performed and where there is no authority for the collector to act and perform any duties in any official capacity. An individual appointed to serve as tax collector on a temporary basis is entitled to the same compensation as an elected tax collector was receiving at the time of suspension. McWilliams, Oct. 24, 2003, A.G. Op. 30-0572.

The governor has authority, upon being satisfied that investigations have been closed, to rescind his prior order suspending a tax collector and thereby reinstate her to office. Straughter, Apr. 26, 2005, A.G. Op. 05-0207.

§ 7-1-63. Contingent fund.

The executive contingent fund shall be expended under the direction of the governor and be accounted for by him to the legislature at each session. The auditor shall issue his warrant on the treasurer for such sums as the governor may from time to time, by his written order, direct; but no part of such fund shall be expended for the private purposes of the governor or for his individual expenses.

HISTORY: Codes, Hutchinson's 1848, ch. 18, art. 6; 1857, ch. 6, art. 9; 1871, § 105; 1880, § 197; 1892, § 2161; 1906, § 2377; Hemingway's 1917, § 4769; 1930, § 4843; 1942, § 4001.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-1-65. To borrow money in case of casualties.

The governor is authorized, in case of casualty or casualties caused by wind, fire, or water leaving people distressed and in destitute circumstances, to borrow money in sums not exceeding Two Thousand Five Hundred Dollars ($2,500.00) in any one case, and to expend the same for the relief of such suffering and on such terms and conditions as he may see fit and proper. There may not be borrowed in any one year more than Ten Thousand Dollars ($10,000.00).

HISTORY: Codes, Hemingway's 1917, §§ 4794, 4795; 1930, § 4844; 1942, § 4002; Laws, 1910, ch. 181.

Cross References — Board of governing authorities making emergency expenditures from municipal budget, see § 21-35-19.

§ 7-1-67. Acting governor in certain contingencies.

When the office of governor shall become vacant, by death or otherwise, the lieutenant-governor shall possess the powers and discharge the duties of said office. When the governor shall be absent from the state or unable from protracted illness to perform the duties of the office, the lieutenant-governor shall discharge the duties of said office until the governor be able to resume his duties. If, from disability or otherwise, the lieutenant-governor shall be incapable of performing said duties or if he be absent from the state, the president of the senate pro tempore shall act in his stead; but if there be no such president or if he be disqualified by like disability or be absent from the state, then the speaker of the house of representatives shall assume the office of governor and perform said duties. In case of the inability of the foregoing officers to discharge the duties of governor, the secretary of state shall convene the senate to elect a president pro tempore. The officer discharging the duties of governor shall receive compensation as such. Should a doubt arise as to whether a vacancy has occurred in the office of governor, or as to whether any one of the disabilities mentioned in this section exists or shall have ended, then the secretary of state shall submit the question in doubt to the judges of the supreme court, who, or a majority of whom, shall investigate and determine said question and furnish to the secretary of state an opinion in writing, which shall be final and conclusive.

HISTORY: Codes, 1880, § 201; 1892, § 2183; 1906, § 2400; Hemingway's 1917, § 4793; 1930, § 4848; 1942, § 4003.

Cross References — Constitutional provision concerning vacancy in office of governor, see Miss. Const. Art. 5, § 131.

General duties of secretary of state, see § 7-3-5.

JUDICIAL DECISIONS

1. In general.

During the absence from the state of the governor, the lieutenant-governor may appoint a chancellor in a case in which the governor if present could make the appointment. Brady v. Howe, 50 Miss. 607, 1874 Miss. LEXIS 100 (Miss. 1874).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Governor §§ 11 et seq.

CJS.

81A C.J.S., States, §§ 273, 291–293.

GOVERNOR-ELECT

Sec.	
7-1-101.	Office, staff, and information for governor-elect.

§ 7-1-101. Office, staff, and information for governor-elect.

The governor's office of general services shall provide a governor-elect with office space and office equipment for the period between the election and inauguration.

A special appropriation to the governor's office of general services is hereby authorized to defray the expenses of providing necessary staff employees and for the operation of the office of a governor-elect during the period between the election and inauguration.

The state fiscal management board shall make available to a governor-elect and his designated representatives information on the following: (a) all information and reports used in the preparation of the budget report; and (b) all information and reports on projected income and revenue estimates for the state.

HISTORY: Codes, 1942, § 4004-41; Laws, 1971, ch. 449, §§ 1-3; Laws, 1984, ch. 488, § 161, eff from and after July 1, 1984.

Editor's Notes — Section 7-1-451 provides that wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

OPINIONS OF THE ATTORNEY GENERAL

A candidate may become entitled to office space when he meets the definition of governor-elect, i.e., is actually chosen for the office by the House of Representatives: however, until that time, the Department of Finance and Administration may offer and provide this space equally to both candidates. Ranck, Dec. 10, 1999, A.G. Op. #99-0666.

FORMER GOVERNOR

Sec.
7-1-151. Appropriation to defray certain expenses of former governor.

§ 7-1-151. Appropriation to defray certain expenses of former governor.

A special appropriation to the state fiscal management board is hereby authorized to defray the expenses of providing necessary secretarial assistance and office supplies for a former governor for a reasonable period of time, not to exceed six (6) months from the expiration of said governor's term of office, to enable such ex-governor to wind up his public obligations and responsibilities and to answer his correspondence and close his official files.

HISTORY: Codes, 1942, § 4004-51; Laws, 1972, ch. 355, § 1; Laws, 1984, ch. 488, § 162, eff from and after July 1, 1984.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

CRIMINAL JUSTICE PLANNING COMMISSION [TERMINATED]

Sec.
7-1-201 through 7-1-209. Terminated.

§§ 7-1-201 through 7-1-209. Terminated.

Terminated by Laws, 1978, ch. 385, § 6, eff September 30, 1981.
§ 7-1-201. [En Laws, 1978, ch. 385, § 1; Laws, 1980, ch. 560, § 5]
§ 7-1-203 through § 7-1-209. [En Laws, 1978, ch. 385, §§ 2-5]

Editor's Notes — Former § 7-1-201 created the criminal justice planning commission in the office of the governor and provided for its membership, terms of office of members, the filling of vacancies, officers, expenses of members, and an executive director and staff.

Former § 7-1-203 provided for meetings of the criminal justice planning commission, fixed a quorum, provided for committees, required open meetings, and required public access to commission records.

Former § 7-1-205 fixed the duties of the commission.

Former § 7-1-207 required quarterly and annual reports by the commission.

Former § 7-1-209 required review of the commission's comprehensive plan for a state criminal justice system by the judiciary en banc committees of the legislature.

DIVISION OF FEDERAL-STATE PROGRAMS

Sec.	
7-1-251.	Department of Finance and Administration to be Office of Governor, Division of Federal-State Programs.
7-1-253.	Repealed.
7-1-255.	Powers and duties of Department.
7-1-257.	Construction of references to office of Executive Director of Federal-State Programs.
7-1-259.	Repealed.

§ 7-1-251. Department of Finance and Administration to be Office of Governor, Division of Federal-State Programs.

The Department of Finance and Administration shall be the Office of the Governor, Division of Federal-State Programs and shall retain all powers and duties granted by law to the Office of the Governor, Division of Federal-State Programs, except for specific duties transferred to other departments under "the Mississippi Executive Reorganization Act of 1989 [Law, 1989, Chapter 544]". Wherever the term "Office of the Governor, Federal-State Programs" appears in any law the same shall mean the Department of Finance and Administration. The Executive Director of the Department of Finance and Administration may assign to the appropriate division such powers and duties as deemed appropriate to carry out the lawful functions of this department.

HISTORY: Laws, 1980, ch. 340, § 1; Laws, 1983, ch. 325 § 1; Laws, 1988, ch. 323, § 1; Laws, 1989, ch. 544, § 19, eff from and after July 1, 1989.

Editor's Notes — Section 8, Chapter 340, Laws, 1980, as amended by Section 5, Chapter 325, Laws, 1983, provided that "Section 1 through 7 this act [See § 7-1-251 et seq.], which create the Division of Federal-State Programs, Office of the Governor, and prescribe its powers and duties, shall stand repealed as of December 31, 1988."

Subsequently, Section 5, Chapter 323, Laws, 1988, repealed Section 8, Chapter 340, Laws, 1980, and Section 5, Chapter 325, Laws, 1983, which imposed repealers on the Division of Federal-State Programs.

For a complete distribution of sections of the Mississippi Executive Reorganization Act of 1989 (Laws, 1989, ch. 544) see Allocation of Acts Table in the Statutory Tables Volume.

Cross References — Authority of division to promulgate rules and regulations and to enter into agreements in order to carry out the provisions of sections 7-1-251 et seq., see § 7-1-255.

Construction of references to office of executive director of federal-state programs, see § 7-1-257.

General provisions regarding the reorganization of the executive branch of government, see § 7-17-1 et seq.

Creation and organization of Department of Finance and Administration, see § 27-104-101.

Transfer of Office of Criminal Justice Planning including Juvenile Justice Advisory Committee, as constituted in Governor's Office of Federal-State Programs on June 30, 1989, to Department of Public Safety, see § 45-1-33.

Inclusion in small business consortium, see § 57-10-157.

RESEARCH REFERENCES

Am. Jur.

56 Am. Jur. 2d, Municipal Corporations § 497.

CJS.

40 C.J.S., Highways §§ 181–186, 188, 203.

63 C.J.S., Municipal Corporations § 1281.

§ 7-1-253. Repealed.

Repealed by Laws, 1989, ch. 544, § 23, eff from and after July 1, 1989.

§ 7-1-253. [En Laws, 1980, ch. 340, §§ 2, 3; Laws, 1983, ch. 325, § 2; Laws, 1988, ch. 323, § 2]

Editor's Notes — Former § 7-1-253 provided for the powers and duties of the Executive Director of the Division of Federal-State Programs.

§ 7-1-255. Powers and duties of Department.

The Department of Finance and Administration shall have the following powers and duties with regard to federal-state programs:

(a) Provide assistance to state departments, agencies and institutions in the development of federal programs and, whenever possible, to local agencies, so that the people of Mississippi can be assured of a fair, efficient and coordinated planning and administration of these programs. The department shall inform the Governor of the fiscal requirements of the state departments, agencies and institutions for these programs so that a comprehensive plan can be developed which will be responsive to state needs and priorities. The Department of Finance and Administration is hereby authorized to receive and expend funds that have been appropriated by the

Legislature in accordance with law for coordinating federal programs and for providing technical assistance to state and local agencies administering those programs. All state departments, agencies and institutions shall cooperate with the department by providing information and assistance when requested.

(b) The Department of Finance and Administration is hereby authorized to cooperate with or, with approval of the Governor, enter into any agreements with any agency, department, official, educational institution or political subdivision of this state, any agency or official of the government of the United States of America, or any private person for and on behalf of any delivery agency, in order to carry out the provisions of Section 7-1-251 et seq. The delivery of services for the programs known as "federal-state programs" shall be carried out by the state delivery agencies as assigned by the Executive Director of the Department of Finance and Administration, or as specified by law.

(c) The department is hereby authorized, with the approval of the Governor, to charge reasonable application fees in the administration of the Federal Low-Income Housing Tax Credit Program established by Title II of the Tax Reform Act of 1986, P.L. 99-514. The department is further authorized and empowered to escalate its budget authority based on any such fees generated. In the event that the government of the state is reorganized so as to provide that an agency other than the department shall administer the Federal Low-Income Housing Tax Credit Program, the authority granted by this paragraph shall be transferred to such successor agency.

(d) The Department of Finance and Administration is authorized to promulgate such reasonable rules and regulations as may be necessary to implement the provisions of Section 7-1-251 et seq., complying with the provisions of Section 25-43-1 et seq.

HISTORY: Laws, 1980, ch 340, § 4, 5, 6; Laws, 1983, ch. 325, § 3; Laws, 1984, ch. 488, § 163; Laws, 1988, ch. 323, § 3; Laws, 1989, ch. 544, § 20, eff from and after July 1, 1989.

Editor's Notes — Section 8, Chapter 340, Laws, 1980, as amended by Section 5, Chapter 325, Laws, 1983, provided that "Section 1 through 7 this act [See § 7-1-251 et seq.], which create the Division of Federal-State Programs, Office of the Governor, and prescribe its powers and duties, shall stand repealed as of December 31, 1988." Subsequently, Section 5, Chapter 323, Laws, 1988, repealed Section 8, Chapter 340, Laws, 1980, and Section 5, Chapter 325, Laws, 1983, which imposed repealers on the Division of Federal-State Programs.

Section 7-1-251 provides that wherever the term "Office of the Governor, Federal-State Programs" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

Assistance by Division of Federal-State Programs in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, as well as in preparing report of efforts made in establishing and operating clearinghouse, see § 69-2-5.

OPINIONS OF THE ATTORNEY GENERAL

Bill creating the Museum Fund in the State Treasury and setting forth the procedures for administration of the grant program by the Department of Archives and History and the Department of Finance and Administration, though authorizing grants to pay the costs of the various projects, does not specify how the two agencies are to administer the grants and, thus, must be seen as permitting the establishment of a reimbursable grant program. Hilliard, January 23, 1998, A.G. Op. #97-0820.

§ 7-1-257. Construction of references to office of Executive Director of Federal-State Programs.

Any reference to the office of the Executive Director of Federal-State Programs or to the Division of Federal-State Programs, Office of the Governor, in any statute or executive order shall be construed to mean the Department of Finance and Administration.

HISTORY: Laws, 1980, ch. 340, § 7; Laws, 1983, ch. 325, § 4; Laws, 1988, ch. 323, § 4; Laws, 1989, ch. 544, § 21, eff from and after July 1, 1989.

Editor's Notes — Section 8, Chapter 340, Laws, 1980, as amended by Section 5, Chapter 325, Laws, 1983, provided that "Section 1 through 7 this act [See § 7-1-251 et seq.], which create the Division of Federal-State Programs, Office of the Governor, and prescribe its powers and duties, shall stand repealed as of December 31, 1988." Subsequently, Section 5, Chapter 323, Laws, 1988, repealed Section 8, Chapter 340, Laws, 1980, and Section 5, Chapter 325, Laws, 1983, which imposed repealers on the Division of Federal-State Programs.

Section 7-1-251 provides that wherever the term "Office of the Governor, Federal-State Programs" appears in any law the same shall mean the Department of Finance and Administration.

Cross References — Creation and organization of Department of Finance and Administration, see § 27-104-101.

§ 7-1-259. Repealed.

Repealed by Laws, 1990, ch 522, § 37, eff from and after July 1, 1990.

§ 7-1-259. [En Laws, 1985, ch. 525, § 35; Am, Laws, 1989, ch. 544, § 22]

Editor's Notes — Former § 7-1-259 provided for the transfer of personnel from the Governor's Office of Administrative Service to the Department of Finance and Administration, as deemed necessary, to carry out the provisions of the Mississippi Executive Reorganization Act of 1989 (Chapter 544, Laws of 1989).

GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND SPORTS [REPEALED]

Sec.
7-1-301 and 7-1-303. Repealed.

§§ 7-1-301 and 7-1-303. Repealed.

Repealed by Laws, 1982, ch. 316, § 3, eff from and after July 1, 1984.

§§ 7-1-301 and 7-1-303. [En Laws, 1980, ch. 431, §§ 1, 2; Am, Laws, 1982, ch. 316, §§ 1, 2]

Editor's Notes — Former § 7-1-301 created the Mississippi Governor's Council on Physical Fitness, provided for the appointment of members and their terms, compensation and staffing.

Former § 7-1-303 specified the powers and duties of the council.

ADMINISTRATION OF THE WORKFORCE INVESTMENT ACT PROGRAMS IN MISSISSIPPI

Sec.

7-1-351. Department of Economic and Community Development to be Division of Job Development and Training [For contingent repeal of this section, see Editor's note].
7-1-353. Repealed.
7-1-355. Administration of Workforce Investment Act programs; annual report on Workforce Investment Act activities [Repealed effective July 1, 2023; For contingent repeal of this section, see Editor's note].
7-1-357. Cooperation with agencies, institutions and other entities [For contingent repeal of this section, see Editor's note].
7-1-359. Repealed.
7-1-361. Rules and regulations [For contingent repeal of this section, see Editor's note].
7-1-363. Contracts with the division of vocational-technical education [For contingent repeal of this section, see Editor's note].
7-1-365. Cooperation with certain other state boards and commissions [For contingent repeal of this section, see Editor's note].
7-1-367. Repealed.
7-1-369. Repealed.
7-1-371. State assets or personnel not to be utilized without federal reimbursement [For contingent repeal of this section, see Editor's note].

§ 7-1-351. Department of Economic and Community Development to be Division of Job Development and Training [For contingent repeal of this section, see Editor's note].

The Department of Economic and Community Development shall be the Division of Job Development and Training and shall retain all powers and duties granted by law to the Division of Job Development and Training and wherever the term "Division of Job Development and Training" shall appear in any law it shall mean the Department of Economic and Community Development. The executive director may assign to appropriate divisions powers and duties as deemed appropriate to carry out the lawful functions of the department.

HISTORY: Laws, 1980, ch. 496, § 1; Laws, 1989, ch. 544, § 45, eff from and after July 1, 1989.

Editor's Notes — Laws of 1980, ch. 496, § 13, provides as follows:

"SECTION 13. This act [§§ 1 through 11 of the act were codified as §§ 7-1-351 through 7-1-371, and § 12 of the act amended former § 25-3-33] shall stand repealed upon the date legislation is enacted appropriating any state funds for the support of the division of job development and training, office of the governor, and the funds so appropriated shall lapse into the fund from which the appropriation was made."

Section 57-1-54 provides that wherever the term "Mississippi Department of Economic and Community Development," or "Mississippi Department of Economic Development," or similar term, appears in any law, the term shall mean the Mississippi Development Authority.

Cross References — Interest on funds in account of Mississippi Employment Security Commission Fixed Price Contract Account to be retained as part of account used for Job Training Partnership Act programs, see § 7-9-12.

General provisions regarding the reorganization of the executive branch of government, see §§ 7-17-1 et seq.

Creation of Department of Economic and Community Development, see § 57-1-52.

Transfer of powers and duties of Department of Economic and Community Development to Mississippi Development Authority, see § 57-1-54.

§ 7-1-353. Repealed.

Repealed by Laws, 1989, ch. 544, § 47, eff from and after July 1, 1989.

§ 7-1-353. [En Laws, 1980, ch. 496, § 2]

Editor's Notes — Former § 7-1-353 authorized the appointment of a director of the division of job development and training.

§ 7-1-355. Administration of Workforce Investment Act programs; annual report on Workforce Investment Act activities [Repealed effective July 1, 2023; For contingent repeal of this section, see Editor's note].

(1) The Mississippi Department of Employment Security, Office of the Governor, is designated as the sole administrator of all programs for which the state is the prime sponsor under Title 1(B) of Public Law 105-220, Workforce Investment Act of 1998, and the regulations promulgated thereunder, and may take all necessary action to secure to this state the benefits of that legislation. The Mississippi Department of Employment Security, Office of the Governor, may receive and disburse funds for those programs that become available to it from any source.

(2) The Mississippi Department of Employment Security, Office of the Governor, shall establish guidelines on the amount and/or percentage of indirect and/or administrative expenses by the local fiscal agent or the Workforce Development Center operator. The Mississippi Department of Employment Security, Office of the Governor, shall develop an accountability system and make an annual report to the Legislature before December 31 of each year on Workforce Investment Act activities. The report shall include, but is not limited to, the following:

(a) The total number of individuals served through the Workforce Development Centers and the percentage and number of individuals for which a quarterly follow-up is provided;

(b) The number of individuals who receive core services by each center;

(c) The number of individuals who receive intensive services by each center;

(d) The number of Workforce Investment Act vouchers issued by the Workforce Development Centers including:

(i) A list of schools and colleges to which these vouchers were issued and the average cost per school of the vouchers; and

(ii) A list of the types of programs for which these vouchers were issued;

(e) The number of individuals placed in a job through Workforce Development Centers;

(f) The monies and the amount retained for administrative and other costs received from Workforce Investment Act funds for each agency or organization that Workforce Investment Act funds flow through as a percentage and actual dollar amount of all Workforce Investment Act funds received.

HISTORY: Laws, 1980, ch. 496, § 3; Laws, 2001, ch. 389, § 1; Laws, 2004, ch. 572, § 57; Laws, 2005, ch. 391, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 57; reenacted without change, Laws, 2010, ch. 559, § 57; reenacted without change, Laws, 2011, ch. 471, § 58; reenacted without change, Laws, 2012, ch. 515, § 57, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 57, eff from and after passage (approved April 3, 2019).

Editor's Notes — Laws of 1980, ch. 496, § 13, provides as follows:

"SECTION 13. This act [§§ 1 through 11 of the act were codified as §§ 7-1-351 through 7-1-371, and § 12 of the act amended former § 25-3-33] shall stand repealed upon the date legislation is enacted appropriating any state funds for the support of the division of job development and training, office of the governor, and the funds so appropriated shall lapse into the fund from which the appropriation was made."

Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, and as amended by Laws of 2019, ch. 451, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2023."

The Workforce Investment Act of 1988, Public Law 105-220, referred to in this section, was repealed by Act July 22, 2014, P.L. 113-128, Title V, Subtitle B, § 511(a), 128 Stat. 1705, effective July 1, 2015, as provided by § 506(a) of such Act, which appears as 29 USCS § 3101 note. Similar provisions can be found in the Workforce Innovation and Opportunity Act, codified generally at 29 USCS § 3101 et seq.

Amendment Notes — The 2019 amendment, effective April 3, 2019, reenacted the section without change.

Cross References — Mississippi Department of Employment Security, see § 71-5-101 et seq.

§ 7-1-357. Cooperation with agencies, institutions and other entities [For contingent repeal of this section, see Editor's note].

The division of job development and training, office of the governor, is hereby authorized to cooperate with or enter into agreements with any agency, official, educational institution or political subdivision of this state, any agency or official of the government of the United States of America, or any private person, firm, partnership or corporation in order to carry out the provisions of Sections 7-1-351 through 7-1-371.

HISTORY: Laws, 1980, ch. 496, § 4, eff from and after July 1, 1980.

Editor's Notes — Laws, 1980, ch. 496, § 13, provides as follows:

"SECTION 13. This act [§§ 1 through 11 of the act were codified as §§ 7-1-351 through 7-1-371, and § 12 of the act amended former § 25-3-33] shall stand repealed upon the date legislation is enacted appropriating any state funds for the support of the division of job development and training, office of the governor, and the funds so appropriated shall lapse into the fund from which the appropriation was made."

Section 7-1-351 provides that wherever the term "Division of Job Development and Training" appears in any law it shall mean the Department of Economic and Community Development.

Section 57-1-54 provides that wherever the term "Mississippi Department of Economic and Community Development," or "Mississippi Department of Economic Development," or similar term, appears in any law, the term shall mean the Mississippi Development Authority.

Cross References — Transfer of powers and duties of Department of Economic and Community Development to Mississippi Development Authority, see § 57-1-54.

§ 7-1-359. Repealed.

Repealed by Laws, 1989, ch. 544 § 48, eff from and after July 1, 1989.

§ 7-1-359. [En Laws, 1980, ch. 496, § 5]

Editor's Notes — Former § 7-1-359 authorized the establishment of advisory councils to the division of job development and training.

§ 7-1-361. Rules and regulations [For contingent repeal of this section, see Editor's note].

The division of job development and training, office of the governor, is authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of Sections 7-1-351 through 7-1-371.

HISTORY: Laws, 1980, ch. 496, § 6, eff from and after July 1, 1980.

Editor's Notes — Laws, 1980, ch. 496, § 13, provides as follows:

"SECTION 13. This act [§§ 1 through 11 of the act were codified as §§ 7-1-351 through 7-1-371, and § 12 of the act amended former § 25-3-33] shall stand repealed upon the date legislation is enacted appropriating any state funds for the support of the division of job development and training, office of the governor, and the funds so appropriated shall lapse into the fund from which the appropriation was made."

Section 7-1-351 provides that wherever the term "Division of Job Development and Training" appears in any law it shall mean the Department of Economic and Community Development.

Section 57-1-54 provides that wherever the term "Mississippi Department of Economic and Community Development," or "Mississippi Department of Economic Development," or similar term, appears in any law, the term shall mean the Mississippi Development Authority.

Cross References — Transfer of powers and duties of Department of Economic and Community Development to Mississippi Development Authority, see § 57-1-54.

§ 7-1-363. Contracts with the division of vocational-technical education [For contingent repeal of this section, see Editor's note].

To the maximum extent practicable, the Department of Economic and Community Development shall contract with the Division of Vocational-Technical Education of the State Department of Education all programs embracing an institutional training component. Such programs shall be contracted to the Division of Vocational-Technical Education of the State Department of Education, except those programs funded by the Governor's special grant, shall be coordinated with and complementary to the existing state public educational systems and shall not be duplicative or competitive in nature to such systems.

HISTORY: Laws, 1980, ch. 496, § 7; Laws, 1989, ch. 544, § 46, eff from and after July 1, 1989.

Editor's Notes — Laws, 1980, ch. 496, § 13, provides as follows:

"SECTION 13. This act [§§ 1 through 11 of the act were codified as §§ 7-1-351 through 7-1-371, and § 12 of the act amended former § 25-3-33] shall stand repealed upon the date legislation is enacted appropriating any state funds for the support of the division of job development and training, office of the governor, and the funds so appropriated shall lapse into the fund from which the appropriation was made."

Section 57-1-54 provides that wherever the term "Mississippi Department of Economic and Community Development," or "Mississippi Department of Economic Development," or similar term, appears in any law, the term shall mean the Mississippi Development Authority.

Cross References — Director of the division of vocational education, see § 37-3-25.

Vocational education generally, see § 37-31-1 et seq.

Establishing and conducting trade schools, classes or courses, see § 37-31-61.

Manpower development and training for specific employment opportunities, see §§ 37-31-101 et seq.

Department of Economic and Community Development, see § 57-1-52.

Transfer of powers and duties of Department of Economic and Community Development to Mississippi Development Authority, see § 57-1-54.

§ 7-1-365. Cooperation with certain other state boards and commissions [For contingent repeal of this section, see Editor's note].

The state department of education, vocational-technical division, the board of trustees of any junior college district, the board of trustees of any school district, the Mississippi Employment Security Commission, and the division of job development and training, office of the governor, shall cooperate in carrying out the provisions of Sections 7-1-351 through 7-1-371.

HISTORY: Laws, 1980, ch. 496, § 8, eff from and after July 1, 1980.

Editor's Notes — Laws, 1980, ch. 496, § 13, provides as follows:

"SECTION 13. This act [§§ 1 through 11 of the act were codified as §§ 7-1-351 through 7-1-371, and § 12 of the act amended former § 25-3-33] shall stand repealed upon the date legislation is enacted appropriating any state funds for the support of the division of job development and training, office of the governor, and the funds so appropriated shall lapse into the fund from which the appropriation was made."

Section 7-1-351 provides that wherever the term "Division of Job Development and Training" appears in any law it shall mean the Department of Economic and Community Development.

Section 57-1-54 provides that wherever the term "Mississippi Department of Economic and Community Development," or "Mississippi Department of Economic Development," or similar term, appears in any law, the term shall mean the Mississippi Development Authority.

Section 71-5-101 provides that wherever the term "Employment Security Commission" appears in any law it shall mean the "Mississippi Department of Employment Services."

Cross References — Interest on funds in account of Mississippi Employment Security Commission Fixed Price Contract Account to be retained as part of account used for Job Training Partnership Act programs, see § 7-9-12.

Powers and duties of school district boards of trustees generally, see §§ 37-7-301 et seq.

Boards of trustees of junior colleges, generally, see § 37-29-67.

Junior college vocational-technical education, see §§ 37-29-161 et seq.

Transfer of powers and duties of Department of Economic and Community Development to Mississippi Development Authority, see § 57-1-54.

Mississippi Department of Employment Security, Office of the Governor, generally, see §§ 71-5-101 et seq.

§ 7-1-367. Repealed.

Repealed by Laws, 1989, ch. 544, § 49, eff from and after July 1, 1989.

§ 7-1-367. [En Laws, 1980, ch. 496, § 9]

Editor's Notes — Former § 7-1-367 authorized implementation of §§ 7-1-351 through 7-1-371 by the Governor.

§ 7-1-369. Repealed.

Repealed by Laws, 1983, ch. 366, eff from and after passage (approved March 16, 1983).

§ 7-1-369. [En Laws 1980, ch. 496, § 10]

Editor's Notes — Former § 7-1-369 provided for an annual review by the joint legislative committee on performance evaluation and expenditure review.

§ 7-1-371. State assets or personnel not to be utilized without federal reimbursement [For contingent repeal of this section, see Editor's note].

Unless wholly reimbursed from federal funds, no state funds, personnel, assets or resources shall be utilized in carrying out the provisions of Sections 7-1-351 through 7-1-371.

HISTORY: Laws, 1980, ch. 496, § 11, eff from and after July 1, 1980.

Editor's Notes — Laws, 1980, ch. 496, § 13, provides as follows:
"SECTION 13. This act [§§ 1 through 11 of the act were codified as §§ 7-1-351 through 7-1-371, and § 12 of the act amended former § 25-3-33] shall stand repealed upon the date legislation is enacted appropriating any state funds for the support of the division of job development and training, office of the governor, and the funds so appropriated shall lapse into the fund from which the appropriation was made."

STATE BOND ADVISORY DIVISION

Sec.
7-1-401. Establishment of State Bond Advisory Division; director.
7-1-403. Powers and duties of division.

§ 7-1-401. Establishment of State Bond Advisory Division; director.

There is hereby created within the Bureau of Budget and Fiscal Management of the State Fiscal Management Board a division to be known as the "State Bond Advisory Division." The State Fiscal Management Board shall appoint a director, who shall have knowledge in the field of state governmental operation and of the state's fiscal and economic affairs and shall employ such other technical, professional and clerical help as he deems necessary. The director shall, before entering upon the duties of his appointment, execute a good and sufficient bond payable to the state in some surety company qualified and doing business in the State of Mississippi in the penal sum of Fifty Thousand Dollars ($50,000.00), conditioned upon the faithful performance of his duties as required by law. The premium on said bond shall be paid as the premium on the Governor's bond.

HISTORY: Laws, 1980, ch. 535, § 1; Laws, 1984, ch. 488, § 139; reenacted and amended, Laws, 1988, ch. 519, § 1, eff from and after May 16, 1988.

Editor's Notes — Section 3 of Chapter 535, Laws of 1980, provided for an automatic repeal date for § 7-1-401, effective from and after July 1, 1988. Section 3 of Chapter 535, Laws of 1980 was subsequently repealed by Section of Chapter 519, Laws of 1988, effective from and after passage (approved May 16, 1988), thereby repealing the repeal provision.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

§ 7-1-403. Powers and duties of division.

The Bond Advisory Division is hereby granted the authority and charged with the responsibility to perform the following duties:

(a) To maintain a close working relationship with agencies authorized to incur bonded indebtedness in order to know the probable schedule for the issuance of bonds so that coordination may be accomplished for orderly issuance.

(b) To require all state agencies authorized to incur bonded indebtedness, in addition to cooperation required in subsection (a), to submit written notice of intent to sell bonds at least thirty (30) days prior to requesting the State Bond Commission to approve the sale of such bonds. Such notification shall contain such information as may be required by the director. However, with the concurrence of the State Fiscal Officer, in cases of emergency the requirement of thirty (30) days' notice may be waived by the director.

(c) To require all state agencies or political subdivisions to submit annual financial reports, and such other interim reports as deemed necessary, on projects financed by state revenue bonds or by state bonds which have the general obligation pledge of the state, but which are primarily backed by specified revenues.

(d) To maintain a complete record of all outstanding state bonds. The record shall include, but shall not be limited to, the following:

(i) Amount of principal of the bonds issued and the rates of interest;

(ii) Dates the bonds were issued, the term or terms of the bonds, and maturities;

(iii) The overall average interest rate to be paid on each issue;

(iv) The name of the paying agent;

(v) The trustees named to administer the issue and the pledges securing such bonds;

(vi) The statutes under which such bonds were issued and the statutory authority for all bonds authorized, whether issued or unissued.

(e) To maintain a close working relationship with the Mississippi Development Authority, the University Research Center and the Commissioner of Revenue in order to obtain current information concerning the economic, financial and growth conditions of the state and such other information necessary to properly comply with the intent of Sections 7-1-401 and 7-1-403.

(f) To receive the cooperation of all state agencies and institutions in accumulating the information required by Sections 7-1-401 and 7-1-403.

(g) To make continuing studies and investigations of government bond interest costs throughout the United States of America and to advise the Governor, the State Bond Commission and the Legislature concerning market conditions and credit condition of the state.

(h) To contract with the Department of Information Technology Services for such data processing or computer services as are necessary in providing complete, current and accurate information regarding bonds issued, maturity dates, interest costs, bond market trends and other data necessary for the proper management of the state's debt and investments of state funds.

(i) To issue rules and regulations as are necessary for the enforcement of the provisions of Sections 7-1-401 and 7-1-403.

(j) To investigate and require reports covering proposed transactions involving refunding bond issues, bond exchanges, bond trades, bond "swaps," redemptions, etc., which may be engaged in with regard to any state bond.

(k) To keep the Governor, Bond Commission and the Legislature informed regarding the credit outlook for the state and to furnish whatever information the Legislature requests which is required to be maintained under Sections 7-1-401 and 7-1-403.

(*l*) To maintain a personal relationship with rating agencies and state bond investors, including the responsibility to invite people in the national financial community to visit our state in order for them to better understand our undertakings, and to incur and pay all expenses in connection with the administration and function of the division, including information meetings or other appropriate forms of communication. All such expenses for these trips shall be paid from appropriations made for the operation of this division.

(m) To cooperate with and provide assistance to counties, municipalities and other political subdivisions when the respective governing authorities request such assistance regarding matters of financial and credit administration and in the preparation of materials and information required to be used in connection with credit ratings and the sale of bonds.

(n) To perform such other duties and acts necessary to carry out the intent of Sections 7-1-401 and 7-1-403.

(o) To maintain a complete record of the name and business address of any person, firm, corporation or other entity deriving any income for services performed with respect to any bonds issued after May 16, 1988, by the State Bond Commission, State Development Bank, Mississippi Housing Finance Corporation, Certified Development Company of Mississippi, Inc., Mississippi Hospital Equipment and Facilities Authority or any other entity issuing bonds or notes of the State of Mississippi. The report shall specify the amount of funds, whether from bond proceeds or otherwise, paid or to be paid to each such person or entity for services performed for each such bond issue. The initial report shall be made available on or before January 15, 1989, to the Clerk of the House of Representatives and to the Secretary of the Senate. All subsequent updated reports shall be submitted on or before January 15 of each year to the Clerk of the House of Representatives, the Secretary of the Senate, the Chairman of the House Ways and Means Committee and the Chairman of the Senate Finance Committee. The State Bond Attorney shall annually compile a list of all local bond issues, itemizing the name of the issuer, a description of the issue, the amount of the bonds issued and the name and address of the person acting as bond counsel on the issue. Such list shall be submitted on or before January 15 of each year to the Clerk of the House of Representatives, the Secretary of the Senate, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Finance Committee, and the Joint Performance Evaluation and Expenditure Review Committee (PEER). The reports required to be compiled pursuant to this paragraph shall be posted on the Department of Finance and Administration's website by not later than January 15 of each year.

HISTORY: Laws, 1980, ch. 535, § 2; Laws, 1984, ch. 488, § 140; Laws, 1988, ch.

518, § 15; Reenacted, Laws, 1988, ch. 519, § 2; Laws, 2013, ch. 569, § 43, eff from and after passage (approved Apr. 25, 2013).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an enacting error in this section by deleting the subsection (1) designation from the first paragraph. The designation was added by § 43 of Chapter 569, Laws of 2013, but the act did not add a subsection (2) designation. The Joint Committee ratified the correction at its August 12, 2019, meeting.

Editor's Notes — Section 3, Laws, 1980, ch. 535, provided for an automatic repeal date for § 7-1-403 from and after July 1, 1988. Section 3, Laws 1980, ch. 535, was subsequently repealed by Section 3, Laws, 1988, ch. 519, eff from and after passage (approved May 16, 1988), thereby repealing the repeal provision.

Section 43-33-704 provides that the term "Mississippi Housing Finance Corporation" shall mean the "Mississippi Home Corporation."

Section 57-10-167 provides that the Certified Development Company of Mississippi, Inc., shall be known as the Mississippi Business Finance Corporation from and after July 1, 1989.

Cross References — Performance Evaluation and Expenditure Review Committee, see § 5-3-51 et seq.

State fiscal management board, see §§ 27-104-1 et seq.

Provision that administration of the powers and functions of the Mississippi Educational Facilities Authority for Private, Nonprofit Institutions of Higher Learning shall be conducted by the State Bond Advisory Division, see § 41-73-7.

Role of state bond advisory division and director thereof in connection with functions and responsibilities of Mississippi Hospital Equipment Financing Authority, see § 41-73-7.

OFFICE OF GENERAL SERVICES

Sec.
7-1-451. Department of Finance and Administration to be Office of General Services.
7-1-453. Repealed.

§ 7-1-451. Department of Finance and Administration to be Office of General Services.

The Department of Finance and Administration shall be the Office of General Services and shall retain all powers and duties granted by law to the Office of General Services. Wherever the term "Office of General Services" appears in any law the same shall mean the Department of Finance and Administration. The Executive Director of the Department of Finance and Administration may assign to the appropriate divisions such powers and duties as deemed appropriate to carry out the department's lawful functions.

HISTORY: Laws, 1984, ch. 488, § 5; Laws, 1989, ch. 544, § 24, eff from and after July 1, 1989.

Editor's Notes — Laws of 1994, ch. 515, § 1, effective from and after passage (approved March 25, 1994), provides as follows:

"SECTION 1. The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management under [Section 7-1-451] et seq. and Section 31-11-1 et seq., Mississippi Code of 1972, is authorized to construct and equip capital improvements and purchase equipment for the Department of Corrections as follows:

Department of Corrections	$13,413,000.00.
Central Mississippi Correctional Facility	$9,000,000.00.
Construct and equip a 128 bed male minimum security unit	$1,600,000.00;.
Construct and equip a 120 bed maximum security reception diagnostic and classification unit	$6,080,000.00;.
Construct and equip a 52 bed female minimum security unit	$1,220,000.00;
Construct and equip a work compound building	$100,000.00;
Modular units for 200 beds	$950,000.00.
State Penitentiary at Parchman	$1,463,000.00.
Construct and equip classroom and office additions to the Alcohol and Drug Program	$588,000.00;
Construct and equip classroom and office additions to the Pre-Release Program	$875,000.00;
Three additional Restitution Centers	$1,000,000.00.
Renovation of existing Restitution Centers	$1,000,000.00.
Total	$13,413,000.00.”

Cross References — General provisions regarding the reorganization of the executive branch of government, see § 7-17-1 et seq.

Care of the capitol, old capitol, state office buildings and executive mansion, see §§ 29-5-1 et seq.

§ 7-1-453. Repealed.

Repealed by Laws, 1989, ch. 544, § 25, eff from and after July 1, 1989.
§ 7-1-453. [En Laws, 1984, ch. 488, § 6]

Editor’s Notes — Former § 7-1-453 provided for the executive director of the office of general services.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Sec.	
7-1-501.	Appointment of State Bar members as commissioners; duties.
7-1-503.	Appointment of associate members.
7-1-505.	Term of appointments; designation of substitute person to attend annual meeting in the absence of commissioner or associate member.

§ 7-1-501. Appointment of State Bar members as commissioners; duties.

The Governor shall appoint as commissioners to the National Conference of Commissioners on Uniform State Laws three (3) members, in good standing, of The Mississippi Bar. In addition to the Governor’s appointees, the commission on uniform state laws shall consist of the following appointed commissioners, all of whom shall be members, in good standing, of The Mississippi Bar: a member of the Senate appointed by the Lieutenant Governor; a member of the House of Representatives appointed by the Speaker of the House; any member of the bar who has been elected a life member of the conference; and the Directors of the Mississippi Law Research Institute, and the Senate and House Legislative Services Offices.

The commissioners so appointed shall confer and act with the commissioners of other states and territories in the formulation of uniform laws on all subjects. The commissioners shall prepare a report on their recommendations to be submitted to the Legislature for its consideration for adoption.

HISTORY: Laws, 1988, ch. 420, § 1; Laws, 2000, ch. 540, § 1, eff from and after passage (approved May 15, 2000).

Editor's Notes — Laws, 1988, ch. 420, § 4, provides as follows:
"SECTION 4. Chapter 42, Laws of 1892, which authorizes the Governor to appoint three (3) citizens, learned in the law, as commissioners to act with like commissioners regarding uniformity of the laws of the several states, is hereby repealed."

§ 7-1-503. Appointment of associate members.

Two (2) associate members of the National Conference of Commissioners on Uniform State Laws, all of whom shall be members, in good standing, of The Mississippi Bar, shall be appointed to act in accordance with the constitution and bylaws of the conference as follows:

(a) The Lieutenant Governor shall appoint one (1) associate member from the staff of the Senate; and

(b) The Speaker of the House of Representatives shall appoint one (1) associate member from the staff of the House.

HISTORY: Laws, 1988, ch. 420, § 2; Laws, 2000, ch. 540, § 2, eff from and after passage (approved May 15, 2000).

§ 7-1-505. Term of appointments; designation of substitute person to attend annual meeting in the absence of commissioner or associate member.

The commissioners and associate members shall serve until such time as they are removed or their successors are appointed by the aforesaid appointing authorities. In the event that a commissioner or associate member is unable to attend an annual meeting of the conference, the appointing authority shall designate a substitute person to attend the meeting.

HISTORY: Laws, 1988, ch. 420, § 3; Laws, 2000, ch. 540, § 3, eff from and after passage (approved May 15, 2000).

GOVERNOR'S COMMISSION ON PHYSICAL FITNESS AND SPORTS

Sec.
7-1-551. Definitions.
7-1-553. Purpose.

Sec.
7-1-555. Membership; reimbursement of travel expenses; terms of service.
7-1-557. Meetings; quorum; dismissal of member; filling vacancy.
7-1-559. Funding; annual budget report.
7-1-561. Duties and responsibilities of commission.
7-1-563. Acceptance of gifts and grants.
7-1-565. Annual report.

§ 7-1-551. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Commission" means the Governor's Commission on Physical Fitness and Sports.

(b) "Physical fitness" means good or improved life-style habits of Mississippi residents through the utilization of recreational opportunities, consistent and medically correct exercise, and leisure time management for the expressed purpose of decreasing stress related maladies, thereby promoting a more healthful environment for the citizens of this state.

(c) "Sports" means those team or individual competitive athletic activities that are participated in on an amateur basis by the citizens of the State of Mississippi for the expressed purposes of enjoyment, exercise and sportsmanship without expectations of financial remuneration.

HISTORY: Laws, 1992, ch. 369, § 1, eff from and after July 1, 1992.

§ 7-1-553. Purpose.

There is hereby created a Governor's Commission on Physical Fitness and Sports to serve the citizens of the State of Mississippi by developing safe, healthful and enjoyable physical fitness and sports programs. This commission shall provide instruments of motivation, education and shall promote public awareness to assure that all citizens of the State of Mississippi will have the opportunity to pursue a more healthful life-style.

HISTORY: Laws, 1992, ch. 369, § 2, eff from and after July 1, 1992.

§ 7-1-555. Membership; reimbursement of travel expenses; terms of service.

The Governor shall appoint twenty-five (25) members, including a chairman, to the commission. The commission members shall be chosen based on their related physical fitness and sports experiences, their education and the areas of expertise that they will contribute to the Governor's commission without expectation of compensation during their appointed terms. These individual members shall be eligible for reimbursement of travel and expenses in the performance of their appointed duties. The first members of the commission shall be appointed for terms as follows:

(a) Six (6) members shall be appointed for terms of one (1) year each;

(b) Six (6) members shall be appointed for terms of two (2) years each;

(c) Six (6) members shall be appointed for terms of three (3) years each;

(d) Six (6) members shall be appointed for a term of four (4) years each; and

(e) The chairman shall be appointed for a term of four (4) years.

Upon expiration of the aforementioned initial terms, successors to each commission post shall be appointed by the Governor to a four-year term. At the discretion of the Governor, commission appointees shall be eligible for reappointment a second time concurrent to their original term. Subsequent to the second term completion, commission members shall not be eligible to serve again on the commission for a period of one (1) year, at which time eligibility for service to the commission can again be activated at the discretion of the Governor.

HISTORY: Laws, 1992, ch. 369, § 3, eff from and after July 1, 1992.

§ 7-1-557. Meetings; quorum; dismissal of member; filling vacancy.

At the convenience and discretion of the Governor, the commission shall be called to meet and conduct business on a basis of need as recommended to the Governor by the commission chairman. Nine (9) members shall constitute a quorum. All rules and regulations enacted by the commission shall be subject to amendment by the Governor. Chronic absenteeism, death, sickness and/or apathy toward commission business may result in the dismissal and/or replacement of a commission member by the Governor. The vacancy resulting from such a dismissal and/or death shall be filled by the Governor at his convenience no later than two (2) months after such a vacancy has occurred.

HISTORY: Laws, 1992, ch. 369, § 4, eff from and after July 1, 1992.

§ 7-1-559. Funding; annual budget report.

In keeping with the ethics and philosophy of the President's Council on Physical Fitness and Sports, funding for the Governor's commission shall be generated primarily on the basis of private sector sponsorship. At no time shall any sponsor and/or commission member be allowed to generate personal and/or corporate profits as a result of its affiliation with the Governor's Commission on Physical Fitness and Sports. Accountability for all monies secured by the commission shall be subject to the Governor's review at any time. The commission shall also be responsible for submitting an annual budget report to the Governor reflecting all debits and credits incurred by the commission during a fiscal year.

HISTORY: Laws, 1992, ch. 369, § 5, eff from and after July 1, 1992.

§ 7-1-561. Duties and responsibilities of commission.

It shall be the duty and responsibility of the Governor's commission to execute to its fullest capacity the following tenets as stated in Presidential Executive Order 12345 of the President's Council on Physical Fitness and Sports:

(a) Enlist the active support and assistance of individual citizens, civic groups, private enterprise, voluntary organizations and others in an effort to promote and improve the fitness of all Mississippians through regular participation in physical fitness and sports activities.

(b) Initiate programs to inform the general public of the importance of exercise and the link which exists between regular physical activity and such qualities as good health and effective performance.

(c) Strengthen coordination of federal services and programs relating to physical fitness and sports participation and invite appropriate federal agencies to participate in an interagency committee to coordinate physical fitness and sports activities of the federal establishment.

(d) Encourage state agencies and local governments to emphasize the importance of regular physical and sports participation.

(e) Seek to advance the physical fitness of children, youth, adults and senior citizens by systematically encouraging the development of community recreation, physical fitness and sports participation programs.

(f) Develop cooperative programs with medical, dental and other similar professional societies to encourage the implementation of sound physical fitness practices and sports medicine services.

(g) Stimulate and encourage research in the areas of sports medicine, physical fitness and sports performance.

(h) Assist educational agencies at all levels in developing high quality, innovative health and physical education programs which emphasize the importance of exercise for good health.

(i) Assist recreation agencies and state sports governing bodies at all levels in developing "sports for all" programs which emphasize the value of sports to physical, mental and emotional fitness.

(j) Assist business, industry, government and labor organizations in establishing sound physical fitness programs to elevate employee fitness and to reduce the financial and human costs resulting from physical inactivity.

HISTORY: Laws, 1992, ch. 369, § 6, eff from and after July 1, 1992.

§ 7-1-563. Acceptance of gifts and grants.

The commission is hereby authorized and empowered to accept from the federal government, or any instrumentality thereof, or from any person, firm or corporation in the name of and for the state, services, equipment, supplies, materials or funds by way of gift or grant for the purpose of physical fitness.

HISTORY: Laws, 1992, ch. 369, § 7, eff from and after July 1, 1992.

§ 7-1-565. Annual report.

The commission shall make an annual report to the Governor and the

Legislature, including therein suggestions and recommendations for protecting and improving the physical fitness of the state.

HISTORY: Laws, 1992, ch. 369, § 8, eff from and after July 1, 1992.

MISSISSIPPI ADVISORY COUNCIL ON FAITH-BASED INITIATIVES

Sec.
7-1-601. Mississippi Advisory Council on Faith-Based Initiatives created; legislative findings and intent; purpose; membership; council functions; report.

§ 7-1-601. Mississippi Advisory Council on Faith-Based Initiatives created; legislative findings and intent; purpose; membership; council functions; report.

(1) The Legislature finds that:

(a) Compassionate groups of individuals have selflessly aided this state in serving our most vulnerable residents and our most debilitated neighborhoods.

(b) Inspired by faith and civic commitment, these organizations have accomplished much in changing the lives of thousands and resurrecting neighborhoods torn by the strife of crime and poverty.

(c) It is essential that this state cooperate with these organizations in order to provide an opportunity to participate on an equal basis, regardless of each organization's orientation, whether faith-based or secular.

(2) It is therefore the intent of the Legislature to recognize the contributions of these organizations and to encourage opportunities for faith-based and community-based organizations to work cooperatively with government entities in order to deliver services more effectively. The Legislature further intends that the purpose of the council is to advise the Governor and the Legislature on policies, priorities, and objectives to enlist, equip, enable, empower, and expand the work of faith-based, volunteer, and other community organizations to the full extent permitted by law.

(3) There is established within the Office of the Governor the Mississippi Advisory Council on Faith-Based Initiatives.

(4)(a) The council shall be composed of not more than twenty-five (25) members. Council members may include, but need not be limited to, representatives from various faiths, faith-based organizations, community-based organizations, foundations, corporations, and municipalities.

(b) The council shall be composed of the following members:

(i) Seventeen (17) members appointed by and serving at the pleasure of the Governor.

(ii) Four (4) members appointed by and serving at the pleasure of the Lieutenant Governor.

(iii) Four (4) members appointed by and serving at the pleasure of the Speaker of the House of Representatives.

(c) Members of the council shall serve for terms of two (2) years, and may continue to serve after the expiration of their terms until a successor is appointed. Members shall be eligible for reappointment and serve at the pleasure of the appointing authority during their terms.

(d) The Governor shall designate a member of the council to serve as chair for a term of two (2) years at the pleasure of the Governor. The chair may continue to serve after the expiration of the chair's term and shall be eligible for redesignation by the Governor.

(e)(i) The heads of executive departments and agencies shall, to the extent permitted by law, provide the council with information it needs for purposes of carrying out its mission.

(ii) The council may request and collect information, hold hearings, establish task forces consisting of members of the council or other individuals, as necessary to carry out its mission.

(iii) The council may conduct analyses and develop reports or other materials as necessary to perform its mission.

(iv) Members of the council shall serve without compensation.

(f) The principal functions of the council are, to the extent permitted by law:

(i) To develop and coordinate activities of faith-based and community-based programs and initiatives, enhance such efforts in communities, and seek such resources, legislation, and regulatory relief as may be necessary to accomplish these objectives;

(ii) To ensure that state policy decisions take into account the capacity of faith-based and other community-based initiatives to assist in the achievement of state priorities;

(iii) To identify and promote best practices and successful modes of delivering social services through faith-based and other community-based organizations;

(iv) To recommend changes in policies, programs, and practices that affect the delivery of services by such organizations and the needs of low-income and other underserved persons in Mississippi communities;

(v) To coordinate public awareness of faith-based and community nonprofit initiatives, such as demonstration pilot programs or projects, public-private partnerships, volunteerism, and special projects;

(vi) To encourage private charitable giving to support faith-based and community-based initiatives;

(vii) To bring concerns, ideas, and policy options to the Governor and Legislature for assisting, strengthening, and replicating successful faith-based and other community-based programs;

(viii) To develop and implement strategic initiatives to strengthen the institutions of families and communities in this state;

(ix) To showcase and herald innovative grassroots nonprofit organizations and civic initiatives;

(x) To eliminate unnecessary legislative, regulatory, and other bureaucratic barriers that impede effective faith-based and other community-based efforts to address social problems;

(xi) To monitor implementation of state policy affecting faith-based and other community-based organizations;

(xii) To ensure that the efforts of faith-based and other community-based organizations meet objective criteria for performance and accountability.

(g) The council may not make any recommendation that conflicts with the Establishment Clause of the First Amendment to the United States Constitution or Section 18 of the Mississippi Constitution.

(h) By December 1 of each year, the council shall prepare a written report for the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives containing a summary of activities and recommendations of the council.

HISTORY: Laws, 2017, ch. 397, § 1, eff from and after passage (approved Mar. 28, 2017).

CHAPTER 3.

SECRETARY OF STATE

General Provisions. 7-3-1
Assistant Secretaries of State. 7-3-71

GENERAL PROVISIONS

Sec.
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7-3-59. Fees collected under Section 75-9-525; funding of Office of Secretary of State expenses; deposit of user charges and fees authorized under this section into State General Fund and use of monies so deposited.

§ 7-3-1. Official bond.

The secretary of state shall give bond to the state in the penalty of ten thousand dollars ($10,000.00), with two or more sufficient sureties to be approved by the governor, conditioned according to law. When approved, said bond shall be filed and preserved in the office of the clerk of the supreme court.

HISTORY: Codes, 1871, § 117; 1880, § 202; 1892, § 4083; 1906, § 4635; Hemingway's 1917, § 7473; 1930, § 6932; 1942, § 4192.

Cross References — Provision that a Secretary of State shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Before whom oath of office is to be taken, see § 25-1-9.

Place of filing of oath of office, see § 25-1-11.

Requirement of state officials making guaranty or surety bonds, see §§ 25-1-13 et seq.

Salary of secretary of state, see § 25-3-31.

§ 7-3-3. Office.

The secretary of state shall keep his office at the seat of the government, shall keep the same open Monday through Friday of each week for eight hours each day, and shall carefully preserve the official books, library, papers, records, and furniture belonging to his office.

HISTORY: Codes, Hutchinson's 1848, ch. 19, art. 5 (1); 1857, ch. 6, art. 10; 1871, § 115; 1880, § 203; 1892, § 4084; 1906, § 4636; Hemingway's 1917, § 7474; 1930, § 6933; 1942, § 4193; Laws, 1904, ch. 168; Laws, 1964, ch. 542, § 4, eff from and after ten days after passage (approved June 11, 1964).

§ 7-3-5. General duties.

The secretary of state shall keep a correct register of all official acts and proceedings of the governor, take charge of and safely keep in his office the returns of all elections by the people, and deliver as received the returns of election of all state officers to the speaker of the house of representatives on the first day of the next ensuing session of the legislature after the election. He shall lay all official documents before either branch of the legislature when required; he shall receive from the clerk of the house of representatives and the secretary of the senate, and shall carefully keep and preserve in his office, the journals, papers and proceedings of both houses of the legislature; and he shall carefully keep and preserve the enrolled acts and resolutions of the legislature, maps, charts and other property of the state remaining at the seat of government, the keeping of which is not otherwise provided for. He shall act as the custodian of the apostille issued by the department of authentications office of the Hague Conference on Private International Law and shall act as the authorizing official for public documents under the Hague Agreement of 1961.

HISTORY: Codes, Hutchinson's 1848, ch. 19, art. 5 (7); 1857, ch. 6, art. 12; 1871, § 118; 1880, § 204; 1892, § 4086; 1906, § 4638; Hemingway's 1917, § 7476; 1930, § 6934; 1942, § 4194; Laws, 1981, ch. 337, § 1; Laws, 1983, ch. 318, eff from and after passage (approved March 3, 1983).

Cross References — Duties of secretary of state when office of governor is vacant, see Miss. Const. Art. 5 § 131; § 7-1-67.

Secretary of State to act as arbitrator in settling disputes between host community for commercial hazardous waste treatment facility and the Department of Finance and

Administration, see § 17-18-39.

Duties with respect to resolutions regarding regional railroad authorities, see § 19-29-11.

Provision that there shall be a State Board of Election Commissioners to consist of the Governor, the Secretary of State, and the Attorney General, see § 23-15-211.

Authority of the Secretary of State to issue instructions and procedures for the safe and efficient use of electronic voting systems, see § 23-15-525.

Responsibilities of the Secretary of State relative to determining the results of elections, see §§ 23-15-605 and 23-15-607.

Responsibilities of the Secretary of State relative to the selection of presidential electors at general elections, see §§ 23-15-785 and 23-15-787.

Responsibilities of the Secretary of State relative to provisions requiring disclosure of campaign finances, see §§ 23-15-805, 23-15-813, and 23-15-815.

Duties of the Secretary of State with respect to amendments to the constitution by voter initiative, see §§ 23-17-1 et seq.

List of fees to be collected by secretary of state, see § 25-7-81.

Secretary of state as member of state board of education, see § 37-1-1.

Secretary of state as member of receiving board to accept or reject applicants to law enforcement officers' training academy, see § 45-5-13.

Secretary as mediator in negotiations between Department of Corrections and corporation formed to manage prison industries regarding leasing of land for new industries, see § 47-5-545.

Requirement that rules and policies governing use of inmate labor be filed with Secretary, see § 47-5-563.

Registration of native wineries with secretary of state, see § 67-5-9.

Secretary of state as agent for service of process upon persons engaged in hatching baby chicks for sale, see § 69-7-201.

Prescribing and adoption of forms under the Uniform Commercial Code, see § 75-9-409.

Secretary of State to administer Mississippi Securities Act, see § 75-71-107.

Duties of secretary of state with respect to business tender offers, see § 75-72-115.

Powers duties of Secretary of State with respect to Mississippi Business Corporations Act, see §§ 79-4-1.01 et seq.

Duties of Secretary of State with respect to reservation of names for use by limited partnerships, see § 79-14-103.

Duties of Secretary of State with respect to change of address by registered agent of limited partnership, see § 79-14-104.

Duties of Secretary of State with respect to filing of certificates relative to limited partnerships, see § 79-14-206.

Duties of Secretary of State with respect to foreign limited partnerships transacting or seeking to transact business in this state, see §§ 79-14-903, 79-14-906, and 79-14-907.

Fees to be collected by Secretary of State under Mississippi Limited Partnership Act, see § 79-14-1104.

Filing of declaration of investment trust with secretary of state, see § 79-15-19.

Secretary of state's duties regarding credit unions, see § 81-13-1.

JUDICIAL DECISIONS

1. In general.

In a prosecution for the unlawful possession of a slot machine found upon the accused's premises during a search by national guardsmen under authority of an executive order, and a search warrant issued by the county judge, it was not error to introduce in evidence a copy of the executive order, certified by the Secretary of State, since whatever right, if any, accused had to subpoena witnesses and contradict the facts set forth in the original executive order applied as well to the copy as to the original. Brady v. State, 229 Miss. 677, 91 So. 2d 751, 1957 Miss. LEXIS 314 (Miss. 1957).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 7-3-5 makes no mention of differing versions of legislative acts, and choosing between such versions; however, it does say that Secretary of State shall receive "the journals, papers and proceedings of both houses of the legislature from the clerk of the house of representatives and the secretary of the senate"; this language, in view of this office, indicates that official versions of acts of legislature are those received from legislative staff and not from any other source. Molpus, May 11, 1993, A.G. Op. #93-0342.

RESEARCH REFERENCES

CJS.
81A C.J.S., States §§ 373–389, 425–430.

Law Reviews.
Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

§ 7-3-7. Seal.

The secretary of state shall have a seal which shall be in the form of a circle, with the image of an eagle in the center and around the margin the words "Secretary of State-State of Mississippi" and under the image of the eagle the word: "Official."

The secretary of state shall affix the seal prescribed to every document where the same is required by law, and to every certificate and other official paper executed by him where necessary or proper. All documents authenticated with said seal and signed by said secretary of state shall be received as evidence in all courts, investigations, and proceedings authorized by law, and may be recorded in the same manner and with like effect as a deed. All copies of papers in the office of said secretary of state, certified by him and authenticated by said seal, shall be accepted in all matters equally in like manner as the original.

HISTORY: Codes, 1930, § 6935; 1942, § 4195; Laws, 1928, ch. 332.

RESEARCH REFERENCES

CJS.
81A C.J.S., States § 158–161.

§ 7-3-9. May perform all duties required of notaries public.

The secretary of state shall have power to administer oaths and affirmations and to take acknowledgments under his seal of office, and to perform all other duties required of notaries public by commercial usage.

HISTORY: Codes, 1930, § 6936; 1942, § 4196; Laws, 1928, ch. 332.

Cross References — Powers and duties of notaries public, see § 25-33-11.

RESEARCH REFERENCES

Am. Jur.
58 Am. Jur. 2d, Notaries Public §§ 28-31.

CJS.
66 C.J.S., Notaries §§ 18-24.

§ 7-3-11. Custodian of "Mississippi Reports"

The secretary of state shall take charge of the department reports and the "Mississippi Reports", when printed and bound, and dispose of the same as required by law.

HISTORY: Codes, 1892, § 4088; 1906, § 4640; Hemingway's 1917, § 7478; 1930, § 6938; 1942, § 4198.

Cross References — Secretary of state as contracting officer for printing acts of legislature, see § 5-1-33.

Crime of fraudulently altering bill or resolution with intent to procure it to be certified by secretary of state, see § 97-7-51.

§ 7-3-13. "Southern Reporter—Mississippi Cases" and department reports deposited in state library.

The Secretary of State shall cause ten (10) copies of each volume of the "Southern Reporter-Mississippi Cases" and ten (10) copies of the department reports to be provided to the State Library.

HISTORY: Codes, 1857, ch. 6, art. 17; 1871, § 122; 1880, § 208; 1892, § 4089; 1906, § 4641; Hemingway's 1917, § 7479; 1930, § 6939; 1942, § 4199; Laws, 1989, ch. 321, § 4; Laws, 1992, ch. 543, § 12; Laws, 2002, ch. 351, § 2, eff from and after July 1, 2002.

§ 7-3-15. "Southern Reporter—Mississippi Cases" distributed.

The Secretary of State shall transmit, free of cost, one (1) copy of each volume of "Southern Reporter-Mississippi Cases" to the sheriff of each county of the state, for the county library, if the sheriff specifically requests copies of the volumes of "Southern Reporter-Mississippi Cases" in writing; one (1) copy of each volume thereof to each of the following educational institutions: Mississippi State University, Alcorn State University, Mississippi University for Women, Mississippi College School of Law, Delta State University, Jackson State University, Mississippi Valley State University, and the University of Southern Mississippi; ten (10) copies of each volume thereof to the University of Mississippi; and one (1) copy of each volume to the Library of Congress at Washington, D.C.

The above provisions of this section are made in recognition of benefits received through receipt at depository libraries and elsewhere in the State of Mississippi of public documents of the United States under the provisions of federal and state laws.

HISTORY: Codes, 1880, § 265; 1892, § 4093; 1906, § 4645; Hemingway's 1917,

§ 7483; 1930, § 6943; 1942, § 4203; Laws, 1936, 1st Ex. ch. 14; Laws, 1940, ch. 317; Laws, 1992, ch. 543, § 13; Laws, 2002, ch. 351, § 3; Laws, 2012, ch. 390, § 2, eff from and after July 1, 2012.

Editor's Notes — Section 37-117-1 changed the name of Mississippi State College for Women to Mississippi University for Women.

Section 37-121-1 changed the name of Alcorn Agricultural and Mechanical College to Alcorn State University.

Section 37-123-1 changed the name of Delta State College to Delta State University.

Cross References — Distribution of books received from sheriffs, see § 7-3-25.

§ 7-3-17. "Mississippi Reports" exchanged for reports of other states and countries.

The secretary of state, under direction of the governor, shall transmit to the executive or other proper officer of each state and territory of the United States, and to any foreign government or country that will exchange its judicial reports therefor, copies of each volume of the "Mississippi Reports," not exceeding five.

HISTORY: Codes, 1880, § 266; 1892, § 4094; 1906, § 4646; Hemingway's 1917, § 7484; 1930, § 6944; 1942, § 4204.

§ 7-3-19. Books furnished University law school for exchange.

The dean of the law school of the University of Mississippi is hereby authorized and empowered, with the approval of the attorney general and secretary of state, to make requisitions to the secretary of state for the departmental reports and "Mississippi Reports" to exchange with other states for similar publications and make the same available in the law school library for the purpose of increasing its facilities.

The secretary of state is hereby authorized and empowered to furnish these publications upon requisition from the dean of the law school of the University of Mississippi.

HISTORY: Codes, 1942, § 4217; Laws, 1938, Ex. ch. 29.

§ 7-3-21. Repealed.

Repealed by Laws, 1988, ch. 486, § 3, eff from and after July 1, 1988.

§ 7-3-21. [Codes, 1892, § 4092; 1906, § 4644; Hemingway's 1917, § 7482; 1930, § 6942; 1942, § 4202; Laws, 1940, ch. 317]

Editor's Notes — Former § 7-3-21 required the secretary of state to distribute copies of the Mississippi Department Reports.

§ 7-3-23. Acts of congress and other publications distributed.

The secretary of state shall, at the time of distributing the laws and journals, also transmit to the sheriff of each county, for the county library, one copy of the acts of congress, if there be so many remaining, and such other books, papers, maps, and documents as may be required by the legislature or governor to be distributed to the several counties.

HISTORY: Codes, 1857, ch. 6, art. 19; 1871, § 124; 1880, § 210; 1892, § 4096; 1906, § 4648; Hemingway's 1917, § 7486; 1930, § 6946; 1942, § 4206.

§ 7-3-25. Books received from sheriffs distributed.

The secretary of state shall receive from the several sheriffs, who are required to return the same, all extra copies of the "Mississippi Reports" and digests, and he shall see that said sheriffs perform the duty required of them in this respect. If there be less than the required number of copies of any report or digest in the state library, he shall supply the deficiency from the reports so returned to him. Out of the residue of the reports so returned, he shall, as far as possible, supply each county with the books needed to complete the set belonging thereto and shall take the receipt of the sheriff therefor. Any books not thus disposed of shall be preserved in his office and sold as other like books.

HISTORY: Codes, 1892, § 4100; 1906, § 4652; Hemingway's 1917, § 7490; 1930, § 6950; 1942, § 4210.

§ 7-3-27. Books and documents distributed and receipted for.

The secretary of state shall send, by suitable means at as cheap a rate as he can obtain, to the sheriffs of the several counties the books, documents, and papers required to be distributed to the various officers in their respective counties as soon as practicable after he receives the same; and shall likewise send to the various other distributees the books and documents to which they respectively are entitled. The sheriffs and other distributees shall send by mail, postpaid, or deliver to the secretary of state a certificate as evidence of the books, documents, and papers received, which, when received, shall be filed by the secretary of state in his office.

HISTORY: Codes, 1871, § 125; 1880, § 211; 1892, § 4097; 1906, § 4649; Hemingway's 1917, § 7487; 1930, § 6947; 1942, § 4207.

§ 7-3-29. Expense of distributing books remunerated.

The secretary of state shall be remunerated for all expenses necessarily incurred in the distribution and transportation of books and documents, upon a verified statement of the same to the auditor of public accounts, who shall issue a warrant on the treasury for the required sum of money.

HISTORY: Codes, 1871, § 127; 1880, § 213; 1892, § 4098; 1906, § 4650; Hemingway's 1917, § 7488; 1930, § 6948; 1942, § 4208.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§§ 7-3-31 and 7-3-33. Repealed.

Repealed by Laws, 1992, ch. 543, § 15, eff from and after July 1, 1992.
§ 7-3-31. [Codes, 1942, § 4219; Laws, 1936, ch. 211]
§ 7-3-33. [Codes, 1942, § 4220; Laws, 1936, ch. 211]

Editor's Notes — Former § 7-3-31 prescribed the number of reports and records required to be maintained by the Secretary of State.

Former § 7-3-33 authorized the sale by the Secretary of State of certain excess volumes.

§ 7-3-35. Sale of current volumes.

The Secretary of State is authorized and empowered to sell current and future issues, and excess volumes at the cost of printing, binding and mailing. The funds realized by the Secretary of State from any sales of excess volumes shall be paid into the State General Fund in the manner prescribed by law.

HISTORY: Codes, 1942, § 4221; Laws, 1936, ch. 211; Laws, 1992, ch. 543, § 14, eff from and after July 1, 1992.

§ 7-3-37. Repealed.

Repealed by Laws, 1992, ch. 543, § 15, eff from and after July 1, 1992.
§ 7-3-37. [Codes, 1892, § 4095; 1906, § 4647; Hemingway's 1917, § 7485; 1930, § 6945; 1942, § 4205; Laws, 1989, ch. 321, § 5, eff from and after July 1, 1989]

Editor's Notes — Former § 7-3-37 authorized the Secretary of State to sell the "Mississippi Reports."

§ 7-3-39. To publish constitutional amendments.

The Secretary of State shall have published in full each constitutional amendment two (2) weeks previous to an election at which the qualified electors shall vote on said amendments, in each county in each newspaper having a general circulation in the county, as defined in Section 13-3-31; or he shall have each amendment posted in three (3) public places in the county if all such newspapers in the county refuse to publish same at the price provided in Section 7-3-41.

HISTORY: Codes, Hemingway's 1917, § 7496; 1930, § 6951; 1942, § 4211; Laws, 1908, ch. 135; Laws, 1991, ch. 499 § 1, eff from and after passage (approved April 3, 1991).

Cross References — Procedure for change, alteration, or amendment to constitution, see Miss. Const. Art. 15, § 273.

Application of this section to provisions relative to elections, see § 23-15-369.

JUDICIAL DECISIONS

1. In general.

The provision for publication of a proposed constitutional amendment is directory and not mandatory. Barnes v. Barnett, 241 Miss. 206, 129 So. 2d 638, 1961 Miss. LEXIS 333 (Miss. 1961).

RESEARCH REFERENCES

ALR.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 7-3-41. Payment upon proof of publication.

The said amendments shall be paid for at the prevailing rate per insertion upon proof of publication being furnished to the secretary of state, the printing to be done in eight- or ten-point.

HISTORY: Codes, Hemingway's 1917, § 7497; 1930, § 6952; 1942, § 4212; Laws, 1908, ch. 135; Laws, 1968, ch. 506, § 4, eff from and after passage (approved August 8, 1968).

§ 7-3-43. Official character of officer certified.

The secretary of state shall furnish to any person desiring the same a certificate, under the seal of the state, signed by the governor and countersigned by himself, of the official character of any officer of this state; and such certificate shall be received in evidence in all courts.

HISTORY: Codes, Hutchinson's 1848, ch. 19, art. 11; 1857, ch. 6, art. 14; 1871, § 120; 1880, § 206; 1892, § 4099; 1906, § 4651; Hemingway's 1917, § 7489; 1930, § 6949; 1942, § 4209.

Cross References — Certified copies of public books, records, papers, and writings to be used as evidence, see § 13-1-77.

§ 7-3-45. Reports to be filed by constables.

Each and every constable being compensated in whole or in part on a fee basis shall file not later than April 15 of each year, with the Secretary of State, a true and accurate annual report on a form to be designed and supplied to each by the State Auditor of Public Accounts immediately after January 1 of each year, said form to include at least information showing gross receipts from all sources accruing as compensation to his office and disbursements occurring as necessary expenses involved solely in complying with laws governing the office. Said report shall be in triplicate, and each copy shall be sworn to and signed, and shall also be spread upon the minutes of the board of supervisors of the respective counties from which the report is made. Each such constable, upon resigning or leaving office otherwise before the expiration of term of office, shall submit a supplemental report as above, covering the final period of his term not included in a previous report.

Any person who shall knowingly and willfully fail to file the report as required by this section, or who shall, although filing such report, knowingly and willfully fail to disclose information required by this section, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00).

HISTORY: Codes, 1930, § 6955; 1942, § 4215; Laws, 1929, H. B. No. 35; Laws, 1966, ch. 301, § 1; Laws, 1968, ch. 368, § 1; Laws, 1968, ch. 361, § 5; Laws, 1981, ch. 471, § 18; Laws, 1985, ch. 440, § 1; Laws, 1996, ch. 535, § 2, eff from and after passage (approved April 12, 1996).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Notice of delinquency to officials failing to file required report on time, see § 7-3-47.

List of fees of sheriffs and tax collectors, see §§ 25-7-19, 25-7-21.

Salaries of county auditors, see § 25-3-19.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

OPINIONS OF THE ATTORNEY GENERAL

Filing of annual reports by elected officials is not complete if an officer fails to file a copy of his report with the appropriate board of supervisors, and the Secretary of State, upon notification by a board of supervisors that an officer has failed to file the required copy, can initiate penalty proceedings. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

Filing required by Section 7-3-45 is incomplete if public officer charged with filing appropriate report failed to file copy of report with his particular board of supervisors and penalties set forth in statute would apply to those who fail or refuse to file required forms with county board of supervisors. Norton, Feb. 2, 1994, A.G. Op. #93-0950.

Since Section 7-3-45 requires that officer's annual report be submitted to Secretary of State no later than April 15, it is corollary requirement that sworn and signed copy of report also be submitted to county board of supervisors no later than April 15 of each year. Norton, Feb. 2, 1994, A.G. Op. #93-0950.

§ 7-3-47. Penalty for failure or evasion.

(1) On or before April 20 of each year, the Secretary of State shall notify by mail every constable being compensated in whole or in part on a fee basis who has failed to file the report required by Section 7-3-45; and on or before May 15 of each year, he will notify the Attorney General of the ones of same by name who still have not filed such report, and the attorney general shall thereupon prosecute such delinquent officers. If such report is not made by July 1 of the year, injunctive action and discovery in the chancery court of the residence of any such delinquent officer shall lie, and the Attorney General

shall prosecute an action or actions in such court to obtain the proper information for each delinquent report.

(2) Failure on the part of any such officer to file such report by May 15 or evasion of the cited section, either by failure to report properly or by false entry, shall constitute a misdemeanor and shall be punishable by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment as the court may direct.

(3) If any such constable compensated by fees shall fail to file such report by May 1 in any year, all fees, salaries, and other remuneration collected by such official from May 1 until the date when such report is filed shall be forfeited to the general fund of the county. Any such official going out of office at the end of his or her term shall be liable on his or her official bond for the refund of all allowances, fees, salaries, or other remuneration received by him or her from the county treasury during the last year of his or her term of office, if such report is not filed with the Secretary of State by May 1 of the following year.

HISTORY: Codes, 1930, §§ 6505, 6956; 1942, §§ 4167, 4216; Laws, 1928, ch. 87; Laws, 1929, H. B. No. 35; Laws, 1932, ch. 193; Laws, 1938, Ex. ch. 25; Laws, 1940, ch. 255; Laws, 1948, ch. 267; Laws, 1950, ch. 258; Laws, 1952, ch. 218; Laws, 1958, ch. 343; Laws, 1966, chs. 300, 301, §§ 1, 2; Laws, 1968, ch. 368, § 2; Laws, 1968, ch. 361, § 70, Laws, 1981, ch. 471, § 19; Laws, 1996, ch. 535, § 3, eff from and after passage (approved April 12, 1996).

Cross References — Fees of sheriffs and tax collectors, see §§ 25-7-19, 25-7-21.

Fees of clerk of chancery court, see § 25-7-9.

Chancery clerk itemizing all fees, see § 25-7-11.

Fees of clerk of circuit court, see § 25-7-13.

Additional allowances to circuit court clerks in counties having two judicial districts, see § 25-7-15.

Additional remuneration for circuit court clerks in certain counties, see § 25-7-15.

Fees of circuit clerks in cases appealed from municipalities in certain counties, see § 25-7-17.

Fees of marshals and constables, see § 25-7-27.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

County, which was in the fourth class in 1930 and had an assessed valuation of a third class county in 1942, was authorized to allow its auditor a salary of $2,300 for the year 1942 pursuant to Code 1942, § 4159, providing for change in classification of county for the purpose of determining salaries based upon change in assessed valuation, statute (Code 1942, § 4168, since repealed), providing that the classification of counties should be based upon the total assessed valuation during the year 1930, being limited in its application to assessments for the year 1932, the current year during which the latter section was enacted. Barnett v. Woods, 196 Miss. 678, 18 So. 2d 443, 1944 Miss. LEXIS 249 (Miss. 1944).

Assuming that board of supervisors of county which was one of the fourth class in 1930 and had an assessed valuation of a county of the third class in 1942, made unauthorized and excessive allowance as to county auditor's salary for the year 1942 in basing it on classification as a third class county, neither members of the board, nor their bondsmen, could be held personally liable for the reason that the allowance was to an object authorized by law. Barnett v. Woods, 196 Miss. 678, 18 So. 2d 443, 1944 Miss. LEXIS 249 (Miss. 1944).

§ 7-3-49. Data on natural resources assembled.

The secretary of state is hereby authorized and directed, in cooperation with the governor, other state officers, and civic and commercial organizations of the state, counties, and municipalities, to assemble the necessary information, facts, and data to be disseminated in such a manner as to advertise the natural resources, advantages, and commercial and industrial opportunities offered by the state of Mississippi.

HISTORY: Codes, 1942, § 4222; Laws, 1936, ch. 212.

Cross References — Duty of Department of Economic and Community Development to prepare plans for advertisement and development of the state, see § 57-1-13.

Duties of agriculture and commerce commissioner generally, see § 69-1-1 et seq.

State institutions being required to aid in furnishing data to the commissioner of agriculture and commerce, see § 69-1-17.

§ 7-3-51. Publication of data.

As soon as sufficient material is assembled for comprehensive exposition of the advantages offered by the state for commercial and industrial development, the same shall be classified and published in the form of booklets, folders, pamphlets, or other forms of printed matter suitable for the convenient distribution to the public.

HISTORY: Codes, 1942, § 4223; Laws, 1936, ch. 212.

§ 7-3-53. Distribution of data.

It shall be the duty of the secretary of state to distribute said printed advertising matter among the several state officers and institutions as may be deemed proper and necessary for thorough dissemination of the information contained therein to the general public within and without the state. Ample supplies of such advertising matter shall be furnished to all civic bodies, boards of trade, chambers of commerce, and other similar organizations in municipalities throughout this state, and other states, when requested or when it is deemed advisable to accomplish the purpose stated in Section 7-3-49.

HISTORY: Codes, 1942, § 4225; Laws, 1936, ch. 212.

§ 7-3-55. Continued publication discretionary.

Said publications and distribution shall be continued or renewed from time to time, in the discretion of the governor, as additional information is available for properly advertising the advantages of the state.

HISTORY: Codes, 1942, § 4226; Laws, 1936, ch. 212.

§ 7-3-57. Publication of the text of Chapter 9 of Title 75.

The Secretary of State is hereby authorized and directed to prepare and make available to the public, either in printed form or on the Secretary of State's website, the text, with an index, of Chapter 9, Title 75, Mississippi Code of 1972, as amended.

HISTORY: Laws, 1977, ch. 452, § 38; Laws, 2013, ch. 368, § 1, eff from and after July 1, 2013.

§ 7-3-59. Fees collected under Section 75-9-525; funding of Office of Secretary of State expenses; deposit of user charges and fees authorized under this section into State General Fund and use of monies so deposited.

(1) Except as otherwise provided in this section, all fees collected by the Office of the Secretary of State under Section 75-9-525 shall be deposited in State Treasury Special Fund 3111, and shall be used to operate the activities of the Office of the Secretary of State as necessary to administer the filing and research provisions of Revised Article 9 of the Uniform Commercial Code and to pay to each chancery clerk such amounts as that clerk shall be owed under subsection (2) of this section. The expenditure of the funds deposited in this fund shall be paid by the State Treasurer upon requisition signed by the Office of the Secretary of State.

(2)(a) Through September 30, 2007, for each filing and indexing of a financing statement under Part 5 (Filing) of Title 75, Chapter 9 (Uniform Commercial Code Revised Article 9 – Secured Transactions), the Secretary of State shall remit the following fee to the chancery clerk of the Mississippi county, if any, indicated on the face of the financing statement as the domicile of the debtor, or, if no county is so indicated, the Mississippi county of the address of the debtor stated on the financing statement.

(i) Five Dollars ($5.00), when the financing statement is communicated in writing, either in the standard form prescribed by the Secretary of State or not in the standard form so prescribed, plus Two Dollars ($2.00) for each additional debtor name more than one (1) required to be indexed.

(ii) Five Dollars ($5.00) if the financing statement is communicated by another medium authorized by filing-office rule.

(b) From and after October 1, 2007, for each filing and indexing of a financing statement under Part 5 (Filing) of Title 75, Chapter 9 (Uniform Commercial Code Revised Article 9 – Secured Transactions), the Secretary of State shall remit the following fee to the County Voting Systems Assistance Bond Sinking Fund created under Section 3 of House Bill No. 562, 2006 Regular Session, in such amounts as specified in Section 3 of House Bill No. 562, 2006 Regular Session, and shall distribute the remainder of the fees to the "Help Mississippi Vote Fund" created in Section 23-15-169.7.

(i) Five Dollars ($5.00), when the financing statement is communicated in writing, either in the standard form prescribed by the Secretary of State or not in the standard form so prescribed, plus Two Dollars ($2.00) for each additional debtor name more than one (1) required to be indexed.

(ii) Five Dollars ($5.00) if the financing statement is communicated by another medium authorized by filing-office rule.

(3) The Secretary of State shall remit to each chancery clerk not less than monthly the amount owed under subsection (2) of this section. Each payment shall be accompanied by a detailed accounting of the transactions represented by that payment. However, from and after October 1, 2007, the Secretary of State shall remit to the County Voting Systems Assistance Bond Sinking Fund and the "Help Mississippi Vote Fund" not less than monthly the amount provided under subsection (2) of this section. Each payment shall be accompanied by a detailed accounting of the transactions represented by that payment.

(4) From and after July 1, 2016, the expenses of the Office of Secretary of State shall be defrayed by appropriation from the State General Fund to the Office of Secretary of State and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined necessary by the State Fiscal Officer for the purpose of paying principal and interest on bond issues for county voting systems, and shall not be authorized for expenditure by the Secretary of State to reimburse or otherwise defray the expenses of any office administered by the Secretary of State.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 2001, ch. 495, § 36; Laws, 2006, ch. 309, § 19; Laws, 2016, ch. 459, § 44; Laws, 2017, 1st Ex Sess, ch. 7, § 3, eff from and after passage (approved June 23, 2017).

Editor's Notes — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Help Mississippi Vote Fund, see § 23-15-169.7.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Uniform Commercial Code Revised Article 9 – Secured Transactions, see § 75-9-101 et seq.

ASSISTANT SECRETARIES OF STATE

Sec.
7-3-71. Assistant secretaries of state; appointment; duties; compensation.

§ 7-3-71. Assistant secretaries of state; appointment; duties; compensation.

The secretary of state shall appoint four (4) competent attorneys, each of whom shall be designated as an assistant secretary of state. The assistants shall have power and authority under the direction and supervision of the secretary of state to perform all of the duties required by law of that officer; and each shall be liable to the pains and penalties to which the secretary of state is liable. The assistants shall serve at the will and pleasure of the secretary of state, and they shall devote their entire time and attention to the duties pertaining to the department of state as required by the general laws. The compensation for assistant secretaries of state shall be established by the legislature.

HISTORY: Laws, 1977, ch. 304; Laws, 1978, ch. 520, § 9, eff from and after July 1, 1978.

CHAPTER 5.

ATTORNEY GENERAL

In General. 7-5-1
Insurance Integrity Enforcement Bureau. 7-5-301

IN GENERAL

Sec.

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7-5-63. Reports to the legislature.
7-5-65. Saving statute.
7-5-66. Prepayment of costs in civil actions for recovery of delinquent sums owed to Mississippi Guaranteed Student Loan Program.
7-5-67. Investigators of Public Integrity Division empowered to make arrests, serve and execute search warrants, and serve process.

§ 7-5-1. Qualifications, election, and duties.

The Attorney General provided for by Section 173 of the Mississippi Constitution shall be elected at the same time and in the same manner as the Governor is elected. His term of office shall be four (4) years and his compensation shall be fixed by the Legislature. He shall be the chief legal officer and advisor for the state, both civil and criminal, and is charged with managing all litigation on behalf of the state, except as otherwise specifically provided by law. No arm or agency of the state government shall bring or defend a suit against another arm or agency without prior written approval of the Attorney General. He shall have the powers of the Attorney General at common law and, except as otherwise provided by law, is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest. He shall intervene and argue the constitutionality of any statute when notified of a challenge thereto, pursuant to the Mississippi Rules of Civil Procedure. His qualifications for office shall be as provided for chancery and circuit judges in Section 154 of the Mississippi Constitution.

HISTORY: Codes, 1930, § 3655; 1942, § 3826; Laws, 1930, ch. 154; Laws, 1970, ch. 348, § 1; Laws, 1991, ch. 573, § 3; Laws, 2012, ch. 546, § 1, eff from and after July 1, 2012.

Cross References — Oath of office, see Miss. Const. Art. 14, § 268.

Attorney General as legal representative of the Hazardous Waste Facility Siting Authority and the Hazardous Waste Technical Siting Committee, see § 17-18-41.

Provision that an Attorney General shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Provision that there shall be a State Board of Election Commissioners to consist of the Governor, the Secretary of State, and the Attorney General, see § 23-15-211.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Duties of the Attorney General with respect to amendments to the constitution by voter initiative, see §§ 23-17-1 et seq.

Before whom oath of office is to be taken, see § 25-1-9.

Place of filing of oath of office, see § 25-1-11.

Requirement of state officials to make guaranty or surety bonds, see § 25-1-13.

Salary of attorney general, see § 25-3-31.

Attorney general giving approval to easements for pipe lines, see § 29-1-101.

Attorney general as secretary of mineral lease commission, see § 29-7-1.

Duty of attorney general to represent state bond commission in issuing, selling and validating bonds issued for the support of the Institute for Technology Development, see § 31-29-23.

Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

Duties concerning the University Research Center, see § 37-141-23.

Attorney general as member of state library board, see § 39-1-1.

Attorney general bringing action to enjoin disposal or rendering plant, see § 41-51-33.

Attorney general as member of reviewing board for applicants to law enforcement officers' training academy, see § 45-5-13.

Attorney general appointing members of state oil and gas board, see § 53-1-5.

Attorney general's bringing action to enforce provisions relating to surface mining and for recovery of penalties, see §§ 53-7-59 and 53-7-63.

Membership of attorney general or staff designee on nuclear waste policy advisory council, see § 57-49-7.

Attorney general representing state bond commission in issuing, selling, and validating bonds, see § 59-5-65.

Duties of Attorney General's with respect to bonds issued under Mississippi Farm Reform Act, see § 69-2-33.

Prohibition of attorney general accepting employment from certain corporations, see § 73-3-51.

Establishment of office of, and duties of attorney general in connection with, consumer protection, see §§ 75-24-1 et seq.

Provision that it is the duty of the Attorney General to defend appeals relative to the accuracy of the State Chemist's analyses of samples of internal combustion engine fuel, see § 75-55-31.

Right of Attorney General to challenge corporation's power to act, see § 79-4-3.04.

Proceedings brought by Attorney General for judicial dissolution of corporation, see § 79-4-14.30.

Duty of Attorney General to collect penalties due from foreign corporation for transacting business without certificate of authority, see § 79-4-15.02.

Attorney general examining certificates of incorporation, see § 79-5-5.

Authority of the Attorney General under the Mississippi Nonprofit Corporation Act, see §§ 79-11-133, 79-11-155, and 79-11-387.

Authority of Attorney General to bring action to restrain foreign limited partnership from transacting business in violation of Mississippi Limited Partnership Act, see § 79-14-908.

Duties as legal adviser to department of banking and consumer finance, see § 81-1-79.

Prosecutions arising from legal expense insurance plans, see § 83-49-31.

Authority of the Attorney General and the Department of Wildlife Conservation (now the Department of Wildlife, Fisheries and Parks) to enforce conservation easements, see § 89-19-7.

Expenses of Domestic Violence Division of the Office of Attorney General to be defrayed by appropriation from State General Fund, see § 93-21-31.

Prohibition of attorney general advising or defending criminals, see § 97-11-3.

Additional penalties on certain officers for gambling, see § 97-33-3.

Duties of the State Attorney General with respect to the Crime Victim's Escrow Account Act, see § 99-38-11.

JUDICIAL DECISIONS

1. In general.

Representation of a judge as a public official was within the authority of the Attorney General of Mississippi. The trial court did not commit manifest error in finding that no evidence existed in the record to demonstrate either the existence of an actual attorney-client relationship between a conservator and the Attorney General or that a substantial relationship existed between the mishandling of a conservatorship and the Attorney General's defense of the judge, a current public official, in the civil lawsuit brought by the conservator. Newsome v. Shoemake, 234 So. 3d 1215, 2017 Miss. LEXIS 367 (Miss. 2017).

Where the Mississippi State Board for Community and Junior Colleges (SBCJC) filed suit after the Mississippi Board of Trustees of State Institutions of Higher Learning (IHL) created a full four year university, the Mississippi Supreme Court held that the suit against the IHL was procedurally barred under Miss. Code Ann. § 7-5-1 because the SBCJC did not receive consent from the attorney general to file suit. Bd. of Trs. of State Insts. of Higher Learning v. Ray, 809 So. 2d 627, 2002 Miss. LEXIS 64 (Miss. 2002).

Notice of show cause hearing at which court intended to inquire as to why patient had not been admitted to State Hospital was not adequate notice to attorney general that court intended to consider constitutionality of statute which provides that no person shall be admitted to the State Hospital until the director determines if facilities and services are available. State v. Watkins, 676 So. 2d 247, 1996 Miss. LEXIS 327 (Miss. 1996).

Prosecutorial immunity under § 7-5-1 precluded sponsor of charitable bingo games from instituting federal civil rights action against prosecutors for alleged impropriety in procuring and executing search warrants in effort to enjoin bingo games. Metro Charities, Inc. v. Moore, 748 F. Supp. 1156, 1990 U.S. Dist. LEXIS 14111 (S.D. Miss. 1990).

If Attorney General declines to file suit referred to him by state agency such as State Ethics Commission, where matter is of serious concern to state government, then that agency, if it determines its duties and responsibilities to so require, is at least entitled to have some court pass upon whether it should have its full day in court; if court determines that subject matter of litigation is one which agency is called upon to protect and enforce, agency should have full day in court, including right to legal representation; Attorney General's refusal to represent agency does not deprive court of authority to keep jurisdiction and entertain action; in event of disagreement, court and not Attorney General should make final determination as to whether or not agency is carrying out lawful functions for which it was created. Frazier v. State, 504 So. 2d 675, 1987 Miss. LEXIS 2394 (Miss. 1987).

Attorney General's refusal to bring suit against private contractor for municipal separate school district for alleged damages resulting from the alleged faulty construction of a district's school building does not deprive the school of the right to bring the action and the Attorney General is warranted in refusing to bring the action where the subject matter of the allegations applies solely to one isolated contract on a single school building. Grenada Municipal Separate School Dist. v. Jesco, Inc., 449 So. 2d 226, 1984 Miss. LEXIS 1707 (Miss. 1984).

A school district was expressly and impliedly, both by statute and case law, authorized to file and pursue a claim for damages resulting from the alleged faulty construction of a school building against the contractor, the architect, the bonding company, the subcontractors, and the furnishers of building materials, under § 11-45-11, since the district had responsibility for the erection, repairing and equipping of school facilities pursuant to § 37-7-619 [Repealed], and since § 7-5-1 did not require that the action be brought by the Attorney General, in that the subject matter of the allegations was an isolated contract and its alleged breach resulting in a defective school roof, which was hardly a matter of state-wide interest. Grenada Municipal Separate School Dist. v. Jesco, Inc., 449 So. 2d 226, 1984 Miss. LEXIS 1707 (Miss. 1984).

The Attorney General was authorized to assume control of the defense of a racial discrimination suit against the Board of Trustees of State Institutions of Higher Learning and the entire state university and college system, and the Board was without power to engage private counsel to represent its interests independently. Wade v. Mississippi Cooperative Extension Service, 392 F. Supp. 229, 1975 U.S. Dist. LEXIS 12817 (N.D. Miss. 1975).

This section is not unconstitutional for lack of standards, nor does it vest in the attorney general arbitrary power too vague or unreviewable by courts to survive constitutional scrutiny. Wade v. Mississippi Cooperative Extension Service, 392 F. Supp. 229, 1975 U.S. Dist. LEXIS 12817 (N.D. Miss. 1975).

OPINIONS OF THE ATTORNEY GENERAL

The attorney general's office would be authorized to represent an investigator hired by the board of bar admission as an "employee" of the board. Lackey, July 8, 2005, A.G. Op. 05-0303.

RESEARCH REFERENCES

ALR.

Right of attorney general to intervene in will contest involving charitable trust. 74 A.L.R.2d 1066.

Am. Jur.

7 Am. Jur. 2d, Attorney General §§ 1 et seq.

3 Am. Jur. Legal Forms 2d, Attorney General §§ 29:1 et seq.

CJS.

7A C.J.S., Attorney General §§ 3, 52–78.

Law Reviews.

1982 Mississippi Supreme Court Review: Administrative Law: Intervention by Mississippi's Attorney General on Behalf of the Public. 53 Miss. L. J. 123, March 1983.

1984 Mississippi Supreme Court Review: Corporate, Contract and Commercial Law. 55 Miss L. J. 65, March, 1985.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-5-3. Deputy attorney general.

There shall be no more than two (2) deputy attorneys general whose qualifications shall be the same as that of the Attorney General, who shall be appointed by the Attorney General to serve at his will and pleasure and whose compensation shall be fixed by the Legislature. The Attorney General may, in writing filed with the office of the Secretary of State, designate the deputy attorneys general to perform any duties and powers conferred on the Attorney General and to serve in his place and stead on any nonconstitutional board or commission for a particular meeting or series of called or regular meetings; and on such boards or commissions the deputy attorney general's vote, decision or signature thereon shall have the full force and effect and shall be legal and binding on the State of Mississippi as if the Attorney General had personally participated in such meeting or meetings.

HISTORY: Codes, 1930, § 3655; 1942, § 3826; Laws, 1930, ch. 154; Laws, 1970, ch. 348, § 1; Laws, 1985, ch. 347, eff from and after July 1, 1985.

Cross References — Oath of office, see Miss. Const. Art. 14, § 268.
Before whom oath of office is to be taken, see § 25-1-9.
Place of filing of oath of office, see § 25-1-11.
Requirement of state officials to make guaranty or surety bonds, see § 25-1-13.

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. 2d, Attorney General § 12 ,-13, 35.

§ 7-5-5. Assistants to the attorney general.

(1) The Attorney General shall appoint nine (9) competent attorneys, each of whom shall be designated as an assistant attorney general. The assistants shall each possess all of the qualifications required by law of the Attorney General and shall have power and authority under the direction and supervi-

sion of the Attorney General to perform all of the duties required by law of that officer; and each shall be liable to the pains and penalties to which the Attorney General is liable. The assistants shall serve at the will and pleasure of the Attorney General, and they shall devote their entire time and attention to the duties pertaining to the department of justice as required by the general laws. The compensation of all assistants authorized by law shall be fixed by the Attorney General not to exceed the compensation fixed by law.

(2)(a) The Attorney General shall designate three (3) of the assistant attorneys general authorized under subsection (1) of this section to devote their time and attention primarily to defending and aiding in the defense in all courts of any suit, filed or threatened, against the State of Mississippi, against any subdivision thereof, or against any agency or instrumentality of the state or subdivision, including all elected officials and any other officer or employee thereof. When the circumstances permit, the assistants may perform any of the Attorney General's powers and duties, including, but not limited to, engaging in lawsuits outside the state when in his opinion this would help bring about the equal application of federal laws and court decisions in every state and guaranteeing equal protection of the laws as guaranteed every citizen by the United States Constitution.

(b) The Attorney General may employ outside counsel as special assistant attorneys general on a fee or contract basis; the Attorney General shall be the sole judge of the compensation in such cases except as otherwise provided in Section 7-5-8.

(i) Any contract for services of outside counsel shall require current and complete written time and expense records that describe in detail the time, in increments of no greater than one tenth ($1/1_0$) of an hour, and money spent each day in performance of the contract.

(ii) On conclusion of the matter for which the outside legal services were obtained, outside counsel shall provide a complete written statement of all fees and expenses, and the final complete time and expense records.

(3) The Attorney General may discharge any assistant attorney general or special assistant attorney general at his pleasure and appoint another in his stead. The assistant attorneys general shall devote their entire time and attention to the duties pertaining to the Department of Justice under the control and supervision of the Attorney General.

HISTORY: Codes, 1906, § 183; Hemingway's 1917, § 3471; 1930, § 3656; 1942, §§ 3827, 3827-01, 3827-04; Laws, 1902, ch. 58; Laws, 1929, ch. 15; Laws, 1930, ch. 154; Laws, 1956, ch. 358, § 1; Laws, 1960, ch. 270; Laws, 1962, ch. 487, §§ 1, 4; Laws, 1970, ch. 348, §§ 2, 3; Laws, 2012, ch. 546, § 2, eff from and after July 1, 2012.

Cross References — Appointment and duties of revisor of statutes, see § 7-5-11.

Attorney general appointing assistant attorney general to represent state board of funeral service, see § 73-11-49.

Attorney general appointing an assistant attorney general to advise public service commission, see § 77-3-9.

RESEARCH REFERENCES

Am. Jur.
7 Am. Jur. 2d, Attorney General §§ 12-13, 35.

§ 7-5-7. Outside counsel and special investigators.

(1) The Governor may engage outside counsel on a noncontingent fee basis to assist the Attorney General in cases to which the state is a party when, in his opinion, the interest of the state requires it, subject to the action of the Legislature in providing compensation for such services not to exceed recognized bar rates for similar services.

(2)(a) The Attorney General is hereby authorized and empowered to appoint and employ outside counsel, on a fee or salary basis not to exceed recognized bar rates for similar services, to assist the Attorney General in the preparation for, prosecution, or defense of any litigation in the state or federal courts or before any federal commission or agency in which the state is a party or has an interest. The Attorney General may designate the outside counsel as special assistant Attorney General.

(b) If the compensation agreed upon will be governed by a contingency fee contract, that contract must conform with the requirements of Section 7-5-8.

(3) The Attorney General may also employ special investigators on a per diem or salary basis, to be agreed upon at the time of employment, for the purpose of interviewing witnesses, ascertaining facts, or rendering any other services that may be needed by the Attorney General in the preparation for and prosecution of suits by or against the State of Mississippi, or in suits in which the Attorney General is participating on account of same being of statewide interest.

(4) The Attorney General may pay travel and other expenses of employees and appointees under this chapter in the same manner and amount as authorized by law for the payment of travel and expenses of state employees and officials.

(5) The compensation of appointees and employees under this chapter shall be paid out of the Attorney General's contingent fund, or out of any other funds appropriated to the Attorney General's office.

HISTORY: Codes, 1880, § 2643; 1892, § 2166; 1906, § 2382; Hemingway's 1917, § 4774; 1930, § 3677; Laws, 1942, §§ 3829.5, 3848; Laws, 1958, ch. 290, § 1; Laws, 2012, ch. 546, § 3, eff from and after July 1, 2012.

Cross References — A provision authorizing governor to order suits in foreign jurisdictions, see § 7-1-33.

Creation of the Medicaid fraud control unit, see § 43-13-219.

JUDICIAL DECISIONS

1. In general.

Neither governor nor land commissioner can fix compensation of attorney so employed. State ex rel. Brown v. Poplarville Sawmill Co., 119 Miss. 432, 81 So. 124, 1919 Miss. LEXIS 21 (Miss. 1919), overruled, Solomon v. Continental Baking Co., 174 Miss. 890, 166 So. 376, 165 So. 607, 1936 Miss. LEXIS 215 (Miss. 1936).

RESEARCH REFERENCES

ALR.

Validity, under state law, of appointment of independent special prosecutor to handle political or controversial prosecutions or investigations of persons other than regular prosecutors. 84 A.L.R.3d 29.

Validity, under state law, of appointment of special prosecutor where regular prosecutor is charged with, or being investigated for, criminal or impeachable offense. 84 A.L.R.3d 115.

§ 7-5-8. Congtingent fee contracts with outside counsel.

(1) Before entering into a contingency fee contract with outside counsel, the state, an arm or agency of the state, or a statewide elected officer acting in his official capacity must first make a written determination that contingency fee representation is both cost-effective and in the public interest. The required written determination shall include specific findings for each of the following factors:

(a) Whether there exist sufficient and appropriate legal and financial resources within the Attorney General's office to handle the matter.

(b) The time and labor required; the novelty, complexity, and difficulty of the questions involved; and the skill requisite to perform the attorney services properly.

(c) The geographic area where the attorney services are to be provided.

(d) The amount of experience desired for the particular kind of attorney services to be provided and the nature of the outside attorney's experience with similar issues or cases.

(2)(a) The state, an arm or agency of the state, or a statewide elected officer acting in his official capacity may not enter into a contingency fee contract that provides for the outside attorney to receive a contingency fee, exclusive of reasonable costs and expenses incurred in connection with the case, which is in excess of the following:

(i) Twenty-five percent (25%) of any recovery of up to Ten Million Dollars ($10,000,000.00); plus

(ii) Twenty percent (20%) of any portion of such recovery between Ten Million Dollars ($10,000,000.00) and Fifteen Million Dollars ($15,000,000.00); plus

(iii) Fifteen percent (15%) of any portion of such recovery between Fifteen Million Dollars ($15,000,000.00) and Twenty Million Dollars ($20,000,000.00); plus

(iv) Ten percent (10%) of any portion of such recovery between

Twenty Million Dollars ($20,000,000.00) and Twenty-five Million Dollars (25,000,000.00); plus

(v) Five percent (5%) of any portion of such recovery exceeding Twenty-five Million Dollars ($25,000,000.00).

(b) Except as provided in subsection (3) of this section, a contingency fee shall not exceed an aggregate of Fifty Million Dollars ($50,000,000.00), exclusive of reasonable costs and expenses incurred in connection with the case, and irrespective of the number of lawsuits filed or the number of attorneys retained to achieve the recovery.

(c) A contingency fee shall not be based on penalties or civil fines awarded or any amounts attributable to penalties or civil fines.

(3) The limits on fees set forth in subsection (2) of this section shall not apply if:

(a) The state, an arm or agency of the state, or a statewide elected officer acting in his official capacity makes a written determination stating the reasons why a greater fee is necessary, proper, and in the best interests of the state in a particular case; and

(b) The Outside Counsel Oversight Commission approves any terms of the contingency contract that exceed the limits set forth in subsection (2) of this section.

(4) The Outside Counsel Oversight Commission shall consist of the Governor, the Lieutenant Governor, and the Secretary of State; actions of the commission shall be taken by majority vote. Appeal from a decision of the Outside Counsel Oversight Commission shall be to any court of competent jurisdiction.

(5)(a) Copies of any executed contingency fee contract and the applicable written determination to enter into a contingency fee contract with the outside attorney shall be posted on the Attorney General's website for public inspection within five (5) business days after the date the contract is executed unless the state, arm or agency of the state, or statewide elected officer retaining outside counsel makes a determination, subject to the approval of the Outside Counsel Oversight Commission, that to do so would negatively affect the state's interest, and shall remain posted on the website for the duration of the contingency fee contract, including any extensions or amendments to the contract.

(b) If the determination is made and duly approved that posting the contract will negatively affect the interests of the state, the contract will be posted on the Attorney General's website within five (5) days of the occurrence of the earliest of the following:

(i) Filing of the lawsuit for which the contract was executed;

(ii) Entry of appearance for any pending matter for which the contract was executed; or

(iii) From the time the outside attorney engages in any substantive action on behalf of the state relative to the subject matter for which the contract was executed.

(c) Any payment of contingency fees shall be posted on the Attorney General's website within fifteen (15) days after the payment of the contingency fees to the outside attorney and shall remain posted on the website for at least one (1) year after the date payment is made.

(6) An outside attorney under contract to provide services to the state on a contingency fee basis shall, from the inception of the contract until not less than four (4) years after the contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the providing of attorney services. In addition, the outside attorney shall maintain detailed contemporaneous time records for the attorneys and paralegals working on the matter in increments of no greater than one-tenth ($1/1_0$) of an hour, and shall promptly provide these records to the Attorney General upon request.

(7)(a) If an arm or agency of the state or a statewide elected officer contracts for outside legal counsel pursuant to Section 7-5-39(3) on a contingency fee basis, the arm or agency of the state or the statewide elected officer shall provide complete and timely information to the Office of the Attorney General as to every requirement of this section for inclusion in the report under this section. The Office of the Attorney General shall post the information as received on its website within five (5) days of receipt.

(b) The arm or agency of the state or statewide elected official responsible for retaining outside counsel shall provide complete and timely information to the Office of the Attorney General as to every requirement of Section 7-5-21 for inclusion in the docket required by that section.

HISTORY: Laws, 2012, ch. 546, § 4, eff from and after July 1, 2012.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 7-5-9. Additional employees.

The attorney general shall have the power to employ a suitable and competent person or persons who possess professional skill and/or expert knowledge when such employment shall be necessary in order to enable him to efficiently perform the official duties imposed upon him by law, and he may pay such person or persons reasonable compensation as may be agreed upon, provided such compensation shall not exceed the compensation usually paid for similar services by private employers of such persons. The compensation and necessary expenses of such employees shall be paid out of the attorney general's contingent fund or out of funds especially appropriated for such purposes.

HISTORY: Codes, 1930, § 3658; 1942, § 3829; Laws, 1930, ch. 154.

§ 7-5-11. Statutory Advisor.

There is created the position of the Mississippi Statutory Advisor. The duties of the statutory advisor shall be to study, compare, and analyze the statute laws of this state and make report on his work to the Joint Committee on the Compilation, Revision and Publication of Legislation, calling particular attention to errors, duplications, and conflicts found therein, along with recommendations for such corrections thereof as deemed advisable. It shall also be his duty to advise and consult with the joint committee and its counsel in regard to any of the statutes of this state and of the other states or any act of Congress, and on request of any member of the Legislature, he shall give written opinions in regard to the legality and effect of any such statute. Upon request, he shall advise and counsel with legislators in regard to the preparation of any proposed law or resolution for the consideration of the Legislature. At the request of any such member, he shall secure copies of any general law from the other states and give such legislator his opinion thereon and any other information in connection therewith that such legislator may desire in connection with his duties.

The statutory advisor shall be an assistant attorney general, appointed by the Attorney General, in addition to the assistant attorneys general authorized by law, in the same manner and under the same procedure as assistant attorneys general are appointed. His duties, in addition to the duties prescribed herein, shall be the same as that of assistant attorneys general, and his compensation shall be the same, and paid in like manner, as that of assistant attorneys general.

HISTORY: Codes, 1942, § 3828-01; Laws, 1944, ch. 264, §§ 1, 2; Laws, 1950, ch. 200 (2d paragraph); Laws, 1996, ch. 502, § 20; Laws, 1998, ch. 546, § 16, eff from and after July 1, 1998.

Cross References — Duties of the Revisor of Statutes with respect to amendments to the constitution by voter initiative, see §§ 23-17-1 et seq.

Amendments to the constitution by voter initiative, see §§ 23-17-1 et seq.

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. 2d, Attorney General §§ 12-13, 35.

CJS.

7A C.J.S., Attorney General §§ 20-35, 39, 40.

§ 7-5-13. Additional assistants to handle legal affairs of Highway Commission.

The attorney general may, with the approval of the chief justice of the supreme court, appoint not more than two (2) competent attorneys, the number to be appointed to be fixed by the highway commission, each of whom shall be designated assistant attorney general, who shall be assigned specifically to the handling of the legal affairs of the state highway commission. Said assistants shall possess all of the qualifications required by law of the attorney general, shall have power and authority under the direction and supervision of the attorney general to perform all the duties required of that office, and shall be liable to all the pains and penalties to which the attorney general is liable. The attorney general may discharge any such assistant at his pleasure and appoint another in his stead. The attorney general shall fix the annual salary of each of the additional assistant attorneys general appointed under the provisions hereof at such sum as he may deem proper, not to exceed the maximum annual salary fixed by law for assistant attorneys general, said salary to be paid monthly from funds of the state highway commission. The assistant attorneys general shall devote their entire time and attention to the duties pertaining to the department of justice and the legal affairs of the state highway commission under the control and direction of the attorney general.

HISTORY: Codes, 1942, § 3827-11; Laws, 1966, ch. 494, § 1, eff from and after July 1, 1966.

Editor's Notes — Section 65-1-1 provides that whenever the term "State Highway Commission," or the term "commission" meaning the State Highway Commission, appears in the laws of this state, it shall mean the Mississippi Transportation Commission.

§ 7-5-15. Secretaries.

The attorney general is authorized and empowered to employ such secretaries as he may deem necessary for the proper administration of the duties required of his office, and to fix their salaries in such amount as he may deem proper within funds appropriated for such purpose.

HISTORY: Codes, 1930, § 3659; 1942, §§ 3827-02, 3830, 3830.5; Laws, 1930, ch. 154; Laws, 1948, ch. 220; Laws, 1952, ch. 179; Laws, 1958, ch. 290, § 2; Laws, 1962, ch. 487, § 2, eff from and after passage (approved June 1, 1962).

§ 7-5-17. Office hours.

The attorney general shall be assigned an office at the capitol and shall keep the same open Monday through Friday for not less than eight hours each day. He and his assistants shall be there for business during said hours with the exception of such time when the attorney general or his assistants may be required to conduct the state's business at other locations.

HISTORY: Codes, 1892, § 188; 1906, § 194; Hemingway's 1917, § 3482; 1930, § 3660; 1942, § 3831; Laws, 1904, ch. 137; Laws, 1930, ch. 154; Laws, 1964, ch. 542, § 1, eff from and after ten days after passage (approved June 11, 1964).

§ 7-5-19. Office space, supplies, and equipment.

In the event adequate office space for the use of the attorney general cannot be provided either in the state capitol building or the state office building to accommodate the additional authorized staff, the attorney general is hereby authorized to rent, on an annual or month-to-month basis on such terms as he may think proper, such office space as may be necessary in the city of Jackson to accommodate the additional enlarged staff, and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices.

HISTORY: Codes, 1942, § 3827-03; Laws, 1962, ch. 487, § 3, eff from and after passage (approved June 1, 1962).

§ 7-5-21. To keep a docket.

The Attorney General shall keep a docket of all causes in which he is required to appear, whether through his office or through outside counsel, which is a public record and must show the full style of the case, the cause number of the action, the county, district and court in which the causes have been instituted and tried, and whether the case is civil or criminal. If civil, the docket must show the nature of the demand, the stage of the proceedings, the name and address of any outside counsel, a description of the fee arrangement with any outside counsel, a memorandum of the judgment when prosecuted to judgment, any process issued thereon, whether satisfied or not, and if not satisfied, the return of the sheriff. If criminal, the docket must show the nature of the crime, the mode of prosecution, the stage of the proceedings, a memorandum of the sentence when prosecuted to a sentence, the execution thereof, if executed, and, if not executed, the reasons of delay or prevention.

HISTORY: Codes, 1892, § 181; 1906, § 187; Hemingway's 1917, § 3475; 1930, § 3661; 1942, § 3832; Laws, 2012, ch. 546, § 5, eff from and after July 1, 2012.

§ 7-5-23. To keep an opinion-book.

The attorney general shall keep an "opinion-book", in which he shall record or cause to be recorded each and every opinion given by him, or by his assistants, in pursuance of law. Each of his opinions shall be prefaced with a clear and concise statement of the facts upon which it is predicated. The "opinion-book" shall be kept well indexed, both as to subject matters and parties.

HISTORY: Codes, 1892, § 182; 1906, § 188; Hemingway's 1917, § 3476; 1930, § 3662; 1942, § 3833; Laws, 1886, p. 46.

§ 7-5-25. To give opinions in writing.

The Attorney General shall give his opinion in writing, without fee, to the Legislature, or either house or any committee thereof, and to the Governor, the Secretary of State, the Auditor of Public Accounts, the State Treasurer, the Superintendent of Public Education, the Insurance Commissioner, the Commissioner of Agriculture and Commerce, the State Geologist, the State Librarian, the Director of Archives and History, the Adjutant General, the State Board of Health, the Commissioner of Corrections, the Public Service Commission, Chairman of the State Tax Commission, the State Forestry Commission, the Transportation Commission, and any other state officer, department or commission operating under the law, or which may be hereafter created; the trustees and heads of any state institution, the trustees and heads of the universities and the state colleges, the district attorneys, the boards of supervisors of the several counties, the sheriffs, the chancery clerks, the circuit clerks, the superintendents of education, the tax assessors, county surveyors, the county attorneys, the attorneys for the boards of supervisors, mayor or council or board of aldermen of any municipality of this state, and all other county officers (and no others), when requested in writing, upon any question of law relating to their respective offices.

When any officer, board, commission, department or person authorized by this section to require such written opinion of the Attorney General shall have done so and shall have stated all the facts to govern such opinion, and the Attorney General has prepared and delivered a legal opinion with reference thereto, there shall be no liability, civil or criminal, accruing to or against any such officer, board, commission, department or person who, in good faith, follows the direction of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. However, if a court of competent jurisdiction makes such a judicial declaration about a written opinion of the Attorney General that applies to acts or omissions of any licensee to which Section 63-19-57, 75-67-137 or 75-67-245 applies, and the licensee has acted in conformity with that written opinion, the liability of the licensee shall be governed by Section 63-19-57, 75-67-137 or 75-67-245, as the case may be. No opinion shall be given or considered if the opinion is given after suit is filed or prosecution begun.

HISTORY: Codes, 1892, § 183; 1906, § 189; Hemingway's, 1917, § 3477; 1930, § 3663; 1942, § 3834; Laws, 1930, ch. 154; Laws, 1940, ch. 249; Laws, 1978, ch. 458, § 7; Laws, 1997, ch. 332, § 14, eff from and after passage (approved March 17, 1997).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

Cross References — Attorney general's opinion on proposed amendments to municipal charters, see § 21-17-9.

Opinions of the attorney general on ethical questions concerning individual legislators, see § 25-4-18.

Powers and duties of attorney general as attorney for state tax commission, see

§ 29-1-137.

Attorney general advising superintendent of public education, see § 37-3-11.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Contact in writing.

1. In general.

The statutory requirement that no member of the board of chiropractic examiners can be a stockholder in or member of the faculty or board of trustees of any school of chiropractic was not violated by a member who was listed in the bulletin of a chiropractic college as a member of its board of trustees and a visiting lecturer where, inter alia, he declined the invitation to serve, he never attended any meetings of the board and did not participate as a member of the faculty or deliver any lectures to classes; the introduction in evidence of an opinion by the attorney general which was rendered after the filing of this action, although contrary to statute, was harmless error. State ex rel. Smith v. Morgan, 361 So. 2d 338, 1978 Miss. LEXIS 2359 (Miss. 1978).

Where district attorney was serving three counties, he was not precluded from maintaining mandamus proceedings on behalf of one of such counties to compel motor vehicle comptroller to pay over certain funds to county out of gasoline tax collections in excess of the share which comptroller was willing to concede. McCullen v. State, 217 Miss. 256, 63 So. 2d 856, 1953 Miss. LEXIS 429 (Miss. 1953).

Right to bring a mandamus action on behalf of Hancock county, to compel the state highway commission to appraise and reimburse such county for its proportionate value of a bridge, connecting Hancock and Harrison counties, which had been taken over by the commission, was not in the attorney general exclusively, but the district attorney of the judicial district in which Hancock county is located also had such right, and could maintain the action in Hinds county. State ex rel. Cowan v. State Highway Com., 195 Miss. 657, 13 So. 2d 614, 1943 Miss. LEXIS 120 (Miss. 1943).

The courts will not undertake to control the attorney general in the matter of his official opinion. Woodbury v. McClurg, 78 Miss. 831, 29 So. 514, 1901 Miss. LEXIS 131 (Miss. 1901).

2. Contact in writing.

Where a city official merely spoke with the Attorney General's office by telephone and the Attorney General's office did not render a written opinion with regard to the particular facts of the matter at issue, the city could not successfully argue for only prospective application of the court's construction of the statute at issue. City of Durant v. Laws Constr. Co., 721 So. 2d 598, 1998 Miss. LEXIS 391 (Miss. 1998).

An attorney general's opinion, itself infected with unconstitutional state action in attempting to support the action of a school board in establishing a racially segregated private school, cannot be relied on to justify an unconstitutional action, despite statutory language exonerating persons acting in good faith in accordance therewith. United States v. Tunica County School Dist., 323 F. Supp. 1019, 1970 U.S. Dist. LEXIS 10896 (N.D. Miss. 1970), aff'd, 440 F.2d 377, 1971 U.S. App. LEXIS 11198 (5th Cir. Miss. 1971).

OPINIONS OF THE ATTORNEY GENERAL

Approval of local government contracts is not proper function of opinions of Attorney General's office under Miss. Code Section 7-5-25; rather, Attorney General's office offers opinion on specific issues which address city's fundamental authority to entertain contracts relating to sale of its real property; office does not consider adequacy of consideration relating to these transactions, since such requires factual finding rather than presenting question of law; furthermore, office does not purport to offer any opinion as to title or interest, if any, which various parties own. Ellis, Jan. 15, 1993, A.G. Op. #92-0986.

Pursuant to Section 7-5-25, opinions of the Attorney General are issued on questions of state law for future guidance of those entitled to receive them; an Attorney General's opinion can neither validate nor invalidate a past action of an officer or agency, and operates prospectively only. Cardin, Nov. 15, 2002, A.G. Op. #02-0662.

Opinions of the Attorney General are issued on questions of law for the future guidance of those officials entitled to receive them. An Attorney General's opinion can neither validate nor invalidate past action of an officer or agency. Little, June 6, 2003, A.G. Op. 03-0263.

If a constable requests and receives an official opinion from the attorney general, the constable, as the requestor, would be shielded from civil and criminal liability if, in good faith, the constable acted in accordance with the opinion. Smith, Aug. 11, 2006, A.G. Op. 06-0310.

There is no authority for a county to pay delinquent land taxes or to bid on or purchase real property at a county tax sale. Hudson, February 9, 2007, A.G. Op. #07-00038, 2007 Miss. AG LEXIS 19.

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

A homestead exemption claimant who is a bona fide resident of Mississippi, who owns and is occupying a home legally assessed on the land roll, but is displaying a license plate from another state on a vehicle, should be removed from the homestead exemption roll until such time he or she submits proof of full compliance with the Mississippi road and bridge privilege tax laws. Schrimpshire, March 30, 2007, A.G. Op. #07-00162, 2007 Miss. AG LEXIS 65.

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. 2d, Attorney General § 10.

§ 7-5-27. To approve accounts against the state.

All accounts against the state subject to allowance by the supreme court shall be presented to the attorney general for approval. His opinion, or that of his assistant, concerning the validity of the same and whether it should be allowed or disallowed, shall be obtained in writing and presented to the court before the same shall be allowed by said court.

HISTORY: Codes, Hutchinson's 1848, ch. 21, art. 3 (2); 1857, ch. 6, art. 69; 1871, § 165; 1880, § 254; 1892, § 191; 1906, § 197; Hemingway's 1917, § 3485; 1930, § 3664; 1942, § 3835.

Cross References — Supreme Court making allowance for supplying office with books, stationery, furniture, and presses, see § 9-3-23.

Attorney general's duty as to execution of land deeds, see § 55-3-1.

Attorney general giving approval to motor vehicle dealer contracts, see § 63-17-131.

§ 7-5-29. To attend the Supreme Court.

The attorney general shall attend the supreme court, in person or by his assistant, and prosecute and defend therein all causes to which the state or any officer thereof in his official capacity is a party, and all causes to which any county may be a party unless the interest of the county be adverse to the state, to some officer thereof acting in his official capacity, or to some other county.

HISTORY: Codes, Hutchinson's 1848, ch. 21, art. 3 (1); 1857, ch. 6, art. 67; 1871, § 163; 1880, § 251; 1892, § 178; 1906, § 184; Hemingway's 1917, § 3472; 1930, § 3665; 1942, § 3836.

JUDICIAL DECISIONS

1. In general.

Right to bring a mandamus action on behalf of Hancock county, to compel the state highway commission to appraise and reimburse such county for its proportionate value of a bridge, connecting Hancock and Harrison counties, which had been taken over by the commission, was not in the attorney general exclusively, but the district attorney of the judicial district in which Hancock county is located also had such right, and could maintain the action in Hinds county. State ex rel. Cowan v. State Highway Com., 195 Miss. 657, 13 So. 2d 614, 1943 Miss. LEXIS 120 (Miss. 1943).

Attorney general may employ counsel to represent him in proceeding to enjoin appeal from tax assessor. Edward Hines Yellow Pine Trustees v. Knox, 144 Miss. 560, 108 So. 907, 1926 Miss. LEXIS 336 (Miss. 1926).

Although attorney general may, at his own expense employ counsel to assist in appeal from tax assessment, he cannot bind state or taxing district to pay for such service. Edward Hines Yellow Pine Trustees v. Knox, 144 Miss. 560, 108 So. 907, 1926 Miss. LEXIS 336 (Miss. 1926).

Attorney general has no authority to appeal from judgment of the circuit court on appeal from the board of supervisors in a tax proceeding. Board of Sup'rs v. Guaranty Loan, Trust & Banking Co., 117 Miss. 132, 77 So. 955, 1918 Miss. LEXIS 156 (Miss. 1918).

RESEARCH REFERENCES

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-5-31. Failure to attend Supreme Court.

Should the attorney general fail to attend, in person or by his assistant, any term of the supreme court, the court shall appoint some attorney to act for the state in place of the attorney general. The person so appointed shall receive such compensation as the court may allow, not exceeding one fourth of the annual salary of the attorney general, payable out of his salary; and, on production of the order of the court making said allowance, the auditor shall issue his warrant on the treasurer for the amount and shall charge the same to the account of the attorney general.

HISTORY: Codes, Hutchinson's 1848, ch. 21, art. 3(1); 1857, ch. 6, art. 67; 1871, § 163; 1880, § 251; 1892, § 189; 1906, § 195; Hemingway's 1917, § 3483; 1930, § 3666; 1942, § 3837.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Deduction from salary for judge's absence from court, see § 25-3-57.

§ 7-5-33. To enforce judgments and pay over collections.

After judgment in any cause represented by him, the attorney general shall direct the issuing of such process as may be necessary to carry the same into execution. He shall account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or any subdivision thereof.

HISTORY: Codes, 1892, § 179; 1906, § 185; Hemingway's 1917, § 3473; 1930, § 3667; 1942, § 3838.

Cross References — Suits by and against the state, see §§ 11-45-1 et seq.

Procedures for execution on judgment, see §§ 13-3-113 et seq.

RESEARCH REFERENCES

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-5-35. May institute and prosecute suits to vacate fraudulent conveyances.

When it may be necessary or proper for the enforcement or collection of any judgment or debt in favor of the state, or any officer thereof in his official capacity, or of any county, the attorney general shall institute and prosecute in behalf of the creditor a suit or suits to set aside and annul any conveyance or other device fraudulently made by the debtor, or anyone for him, to hinder, delay, or defraud the creditor.

HISTORY: Codes, 1892, § 180; 1906, § 186; Hemingway's 1917, § 3474; 1930, § 3668; 1942, § 3839.

Cross References — Attorney general giving approval to district attorney to prosecute suits to vacate fraudulent conveyances, see § 25-31-25.

Authorization to prosecute suits for the recovery of land, see § 29-1-9.
Powers and duties in connection with consumer protection, see §§ 75-24-1 et seq.

§ 7-5-37. To prosecute suits.

The attorney general shall, at the request of the governor or other state officer, in person or by his assistant, prosecute suit on any official bond, or any contract in which the state is interested, upon a breach thereof, and prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of the state offices. He may require the service or assistance of any district attorney in and about such matters or suits.

HISTORY: Codes, 1892, § 185; 1906, § 191; Hemingway's 1917, § 3479; 1930, § 3669; 1942, § 3840.

Cross References — Quo warranto proceedings by information brought by attorney general in the name of the state, see §§ 11-39-1 et seq.
Attorney general prosecuting suits concerning public land, see § 29-1-7.
Powers and duties of attorney general acting as attorney for state tax commission, see § 29-1-137.
Attorney general institution of action to compel compliance with sixteenth sections and lieu lands statutes, see § 29-3-9.
Action by attorney general to restrain or prevent operation of institution for aged or infirm without license, see § 43-11-27.
Investigation and prosecution under the Medicaid Control Fraud Act, see §§ 43-13-201 et seq.
Prosecution of violations under Medicaid Fraud Control Act, see §§ 43-13-221.
Suits for violation of anti-trust laws, see § 75-21-7.
Suit by attorney general to enjoin violations of electric power association law, see § 77-5-509.
Attorney general applying to chancery court for receivership of burial associations, see § 83-37-31.
Attorney general obtaining injunction against common nuisance places wherein liquor is found, see § 99-27-23.
Suit by attorney general to compel carriers to keep records of liquor deliveries, see § 99-27-31.

JUDICIAL DECISIONS

1. In general.

The attorney general is vested the authority and duty to maintain and preserve the lawfully enacted statutes of the state relating to insurance by restraining violations thereof, and there is no prohibition against the attorney general joining with the insurance commissioner in a bill of complaint for the enforcement of the insurance statutes. Gandy v. Reserve Life Ins. Co., 279 So. 2d 648, 1973 Miss. LEXIS 1489 (Miss. 1973).

The attorney general is a constitutional officer possessed of all the power and authority vested in such an official at common law, and, in addition, such as have been conferred upon him by statute, including the right to institute, conduct, and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order, and protection of public rights, which right is not confined to enforcement of the criminal laws but applies also to all matters of state-wide public interest in any of the courts of the state. Dunn Const. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166, 3 So. 2d 834, 1941 Miss. LEXIS 127 (Miss. 1941).

The attorney general was the proper officer to bring a suit on behalf of the state to recover for wrongful removal of sand and gravel from tide water lands, and judgment of dismissal in the former action involving the same subject matter brought by the state tax collector did not constitute res judicata, or estop the attorney general since the tax collector was not authorized to bring such suit. State ex rel. Rice v. Stewart, 184 Miss. 202, 184 So. 44, 1938 Miss. LEXIS 306 (Miss. 1938).

Attorney general enjoining contractors repairing old capitol, at request of two members of capitol commission, held not liable to contractors whether or not he acted wilfully or maliciously. Semmes v. Collins, 120 Miss. 265, 82 So. 145, 1919 Miss. LEXIS 85 (Miss. 1919).

Attorney general has no authority to appeal from judgment of circuit court on appeal from board of supervisors in a tax proceeding. Board of Sup'rs v. Guaranty Loan, Trust & Banking Co., 117 Miss. 132, 77 So. 955, 1918 Miss. LEXIS 156 (Miss. 1918).

Suits in behalf of the state on the bond of the state treasurer may be brought by the attorney general of his own motion without the co-operation of the district attorney. Miller v. State, 69 Miss. 112, 12 So. 265, 1891 Miss. LEXIS 105 (Miss. 1891).

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. 2d, Attorney General §§ 15 et seq.

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-5-39. To represent the state and state officers in suits; notice of civil legal action; retention of outside counsel under certain circumstances.

(1) Except as otherwise provided by law, the Attorney General shall represent the state, in person or by his assistant, as counsel in all suits against the state in other courts or the Supreme Court at the seat of government, and he shall, in like manner, act as counsel for any of the state officers in suits brought by or against them in their official capacity, touching any official duty or trust.

(2) No civil legal action on behalf of the state, any arm or agency of the state, or any statewide elected officer acting in his official capacity may be taken until seven (7) working days' written notice of the proposed legal action is given to the statewide elected officer or proper person in charge of the arm or agency unless irreparable injury to the state would result by waiting for the expiration of the seven-day period.

(3)(a) The Attorney General shall authorize retention of independent counsel from outside his office by an arm or agency of the state or a statewide elected officer acting in his official capacity if the Attorney General declines representation when requested.

(b)(i) The Attorney General shall authorize retention of independent counsel from outside his office by an arm or agency of the state or a statewide elected officer acting in his official capacity and shall withdraw from representation of the arm or agency of the state or the statewide elected officer if there is a significant disagreement with the Attorney General as to the legal strategy to be used in the matter, and the Outside Counsel Oversight Commission has first approved the retention of outside counsel.

(ii) If an arm or agency of the state or statewide elected officer acting in his official capacity retains outside counsel under this subsection (3), the counsel shall be selected by the arm or agency of the state or the statewide elected officer. Fees of counsel employed on a fee basis shall not exceed recognized bar rates for similar services; any contract for outside counsel employed on a contingency fee basis shall conform to the provisions of Section 7-5-8.

(4) The Attorney General may pursue the collection of any claim or judgment in favor of the state outside of the state.

HISTORY: Codes, 1880, § 252; 1892, § 190; 1906, § 196; Hemingway's 1917, § 3484; 1930, § 3670; 1942, § 3841; Laws, 2012, ch. 546, § 6, eff from and after July 1, 2012.

Cross References — Authority of state to bring actions, see § 11-45-11.

Prior clearance by Attorney General and State Personnel Board or authorization under this section required for payment of certain claims for legal services; exceptions, see § 27-104-105.

Attorney general serving as counsel in unemployment compensation cases, see § 71-5-17.

Commissioner of insurance employing attorneys to administer receivership of insurance company, see § 83-23-5.

Attorney general being forbidden to advise or defend criminals, see § 97-11-3.

JUDICIAL DECISIONS

1. In general.

The Attorney General is clothed with full authority to represent the state in a suit against members of a county board of supervisors for the recovery of misappropriated funds. State ex rel. Patterson v. Warren, 254 Miss. 293, 180 So. 2d 293, 1966 Miss. LEXIS 1592 (Miss. 1966).

The Attorney General, chairman of the Mississippi Tax Commission, the state land commissioner, the chancery clerk, and tax collector and the board of supervisors of Wayne County had the authority and the power to appear in the bankruptcy proceedings against a foreign corporation in federal district court for Arkansas district and present the tax claims for adjudication and payment, provided that the time for redeeming the land from the tax sale had not expired when these proceedings took place. Crowe v. Fotiades, 224 Miss. 422, 80 So. 2d 478, 1955 Miss. LEXIS 506 (Miss. 1955), overruled in part, PMZ Oil Co. v. Lucroy, 449 So. 2d 201, 1984 Miss. LEXIS 1676 (Miss. 1984).

The attorney general is a constitutional officer possessed of all the power and authority vested in such an official at common law, and, in addition, such as have been conferred upon him by statute, including the right to institute, conduct, and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order, and protection of public rights, which right is not confined to enforcement of the criminal laws but applies also to all matters of state-wide public interest in any of the courts of the state. Dunn Const. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166, 3 So. 2d 834, 1941 Miss. LEXIS 127 (Miss. 1941).

The attorney general was the proper officer to bring a suit on behalf of the state to recover for wrongful removal of sand and gravel from tide water lands, and judgment of dismissal in a former action involving the same subject matter brought by the state tax collector did not constitute res judicata, or estop the attorney general since the tax collector was not authorized to bring such suit. State ex rel. Rice v. Stewart, 184 Miss. 202, 184 So. 44, 1938 Miss. LEXIS 306 (Miss. 1938).

State revenue agent suing on behalf of county represented county in all phases of litigation and was bound to represent it as to any offset or counterclaim unless the court authorized some other officer to appear in the county's behalf. Robertson v. Bank of Batesville, 116 Miss. 501, 77 So. 318, 1917 Miss. LEXIS 335 (Miss. 1917).

RESEARCH REFERENCES

CJS.
7A C.J.S., Attorney General §§ 74-78.

Law Reviews.
Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-5-41. To receive certified copies of pleadings.

In all suits against the state of Mississippi, any board, bureau, commission, or department thereof required to be defended by the attorney general, a completed copy of the bill of complaint, declaration, or other original pleading shall be mailed by the plaintiff or complainant to the attorney general, postage prepaid, properly addressed to him; and such original pleading shall bear a proper certificate to such effect when it is filed. No decree pro-confesso or default judgment shall be taken against such defendant.

HISTORY: Codes, 1942, § 3841.5; Laws, 1950, ch. 313.

§ 7-5-43. May advise public officials and employees investigated or sued as result of discharging duties.

(1) In addition to all power and authority vested in the attorney general of the state of Mississippi by its constitution and statutes and all common law power and authority which may be invested in or exercised by such attorney general as such, the attorney general of the state of Mississippi and his assistants and representatives are hereby authorized upon request made of him to, in his discretion, render such services as the attorney general may deem necessary to assist in advising and in representing, either or both, all officers or employees of any county district, county, or municipality of the state of Mississippi, or of the state of Mississippi, or of any board, agency, or commission thereof, as the case may be, or any circuit clerk or county registrar, should they or any of them be investigated or called as a witness by the federal civil rights commission, be sued in an action at law or in equity, be prosecuted or cited to show cause or charged with contempt, civil or criminal, or proceeded against in any manner, either or all, in any state or federal court by the United States government, by any agency, officer, department, or representative of the United States government, or by any other person, either or all, as a result of the discharge by any of said Mississippi county district, county, municipal, or state of Mississippi officers or employees, boards, agencies, or commissions and

the members thereof, or by the said circuit clerk or county registrar of their official duties under the constitution and other laws of the state of Mississippi, or growing out of such official action or nonaction, as the case may be.

The foregoing authority vested in the attorney general as above set out shall not apply to or with respect to any suit, action, hearing, or controversy which may arise between two (2) or more of the aforesaid officers or employees, circuit clerks or county registrars, such commissions, boards, or agencies or members thereof, or said county districts, counties, or municipalities of the state of Mississippi, or between them or by any of them and an agency or officer of the state of Mississippi which, under existing laws of the state of Mississippi, the attorney general is otherwise authorized or required to represent.

(2) Any request made of the attorney general for the assistance above referred to shall be made in writing and, if by an individual, shall be signed by him or her. If by a board or commission or agency as such, there shall be entered upon its minutes an order making such request, and the request from and on behalf of said board, commission, or agency to the attorney general for said assistance shall be accompanied by a certified copy of said order.

HISTORY: Codes, 1942, § 3841.2; Laws, 1958, ch. 257, §§ 1-3.

Cross References — Provisions of this section applying in any tort claim against any person arising from assistance rendered during a radiologic emergency, see § 45-14-17.

JUDICIAL DECISIONS

1. Authority.

Representation of a judge as a public official was within the authority of the Attorney General of Mississippi. The trial court did not commit manifest error in finding that no evidence existed in the record to demonstrate either the existence of an actual attorney-client relationship between a conservator and the Attorney General or that a substantial relationship existed between the mishandling of a conservatorship and the Attorney General's defense of the judge, a current public official, in the civil lawsuit brought by the conservator. Newsome v. Shoemake, 234 So. 3d 1215, 2017 Miss. LEXIS 367 (Miss. 2017).

§ 7-5-45. May advise school officials and employees in proceedings challenging validity of statute.

(1) In addition to all power and authority vested in the attorney general of the state of Mississippi by its constitution and statutes and all common law power and authority which may be vested in or exercised by such attorney general as such, the attorney general of the state of Mississippi and his assistants and representatives are hereby authorized upon request made of him to, in his discretion, render such services as the attorney general may deem necessary to assist in advising and in representing, either or both, any officer or employee of any school district, any agricultural high school and junior college, or any institution of higher learning, the respective boards of trustees thereof, the members of said boards of trustees, any school district,

junior college district, institution of higher learning, and any state officer, should they or any of them be sued, prosecuted, or proceeded against in any manner in any action in any state or federal court which, or the ultimate purpose of which, challenges or seeks to invalidate any statute or provision of the constitution of the state of Mississippi dealing with the establishment, maintenance, operation, control, financing, or determining what persons or pupils shall attend or be enrolled in any or all of said schools or colleges or institutions of higher learning, as violative of the constitution and laws of the United States of America or the state of Mississippi, or should such officers, employees, and members of such boards of trustees be investigated or called as a witness by the federal civil rights commission, cited to show cause, or charged with contempt, civil or criminal, by any officer, agent, department, or court of the United States government.

The foregoing authority vested in the attorney general as above set out shall not apply to or with respect to any suit, action, hearing, or controversy which may arise between two (2) or more of the aforesaid officers or employees, boards or members thereof, school districts, colleges or institutions of higher learning, or between them or any of them and an agency or officer of the state of Mississippi which, under existing laws of the state of Mississippi, the attorney general is otherwise authorized or required to represent.

(2) Any request made of the attorney general for the assistance above referred to shall be made in writing and, if by an individual, shall be signed by him or her. If by a board as such, there shall be entered upon the minutes of such board an order making such request, and the request from or on behalf of said board to the attorney general for said assistance shall be accompanied by a certified copy of said order.

HISTORY: Codes, 1942, § 3841.3; Laws, 1958, ch. 261, §§ 1-3.

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. Pl & Pr Forms (Rev), Declaratory Judgments, Form 4.1 (complaint, petition, or declaration for judgment declaring statute or ordinance unconstitutional).

§ 7-5-47. Suits on bonds of state officers.

The attorney general or his assistant, when required by the governor, shall institute suits for the benefit of the state on the bond of any state officer in any case in which said officer has been guilty of any neglect or violation of his official duties.

HISTORY: Codes, 1880, § 255; 1892, § 192; 1906, § 198; Hemingway's 1917, § 3486; 1930, § 3671; 1942, § 3842.

Cross References — How official bonds are payable, see § 25-1-17.

RESEARCH REFERENCES

Am. Jur.
7 Am. Jur. 2d, Attorney General §§ 22-24.

CJS.
7A C.J.S., Attorney General §§ 74-78.

§ 7-5-49. To advise public service commission.

It shall be the duty of the attorney general to appear in person, or to designate one of his assistants to appear at each meeting of the public service commission and to assist and advise the said public service commission in all matters affecting its power and duties relative to the supervision of common carriers in this state.

HISTORY: Codes, Hemingway's 1917, § 3487; 1930, § 3672; 1942, § 3843; Laws, 1910, ch. 172.

Cross References — Attorney general representing public service commission, see § 7-5-51.

Attorney general working with rate expert of public service commission, see § 77-1-17.

§ 7-5-51. To represent state tax and public service commissions.

The attorney general, as well as the several district attorneys, is hereby authorized to institute or defend any suits arising out of any act or order of the tax commission or the public service commission affecting the laws and revenues of the state.

HISTORY: Codes, Hemingway's 1921, Supp. § 3488a; 1930, § 3673; 1942, § 3844; Laws, 1918, ch. 238.

Cross References — Duties of attorney general as attorney for state tax commission under the homestead exemption act, see § 27-33-49.

JUDICIAL DECISIONS

ANALYSIS

1. Powers and authority generally.
2. Common law powers.
3. Appeal.

1. Powers and authority generally.

Attorney general had authority to assist state tax commissioner with investigation into potential severance and income tax liability arising from energy corporation's payments to modify or rescind long-term contracts with oil and gas producers for purchase prices well above the market price of the commodity. Pursue Energy Corp. v. State Tax Comm'n, 816 So. 2d 385, 2002 Miss. LEXIS 140 (Miss. 2002).

The attorney general is a constitutional officer possessed of all the power and authority vested in such an official at common law, and, in addition, such as have been conferred upon him by statute, including the right to institute, conduct, and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order, and protection of public rights, which right is not confined to enforcement of the criminal laws but applies also to all matters of statewide public interest in any of the courts of the state. Dunn Const. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166, 3 So. 2d 834, 1941 Miss. LEXIS 127 (Miss. 1941).

Powers of district attorneys are statutory, and they cannot encroach on powers of attorney general. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

As to litigation, subject-matter of which is of state-wide interest, attorney general alone has right to represent state. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

District attorneys have no authority to represent state in litigation outside of counties of their district. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

District attorney has no authority to represent state in litigation involving subject matter of state-wide interest, as distinguished from local interest, except as provided by statutory clause relating to actions to enforce penalties, etc. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

2. Common law powers.

Statute held to confer no common law powers on district attorneys, since they had no such powers at common law. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

Statute held effective to confer on attorney general common law powers. Capitol Stages, Inc. v. State, 157 Miss. 576, 128 So. 759, 1930 Miss. LEXIS 342 (Miss. 1930).

3. Appeal.

Attorney general may appeal as an incident connected with prosecution for defense of suit under this section [Code 1942, § 3844]. Board of Sup'rs v. Guaranty Loan, Trust & Banking Co., 118 Miss. 600, 79 So. 802, 1918 Miss. LEXIS 102 (Miss. 1918).

Attorney general may bring such appeal although judgment was entered prior to passage of this section [Code 1942, § 3844]. Board of Sup'rs v. Guaranty Loan, Trust & Banking Co., 118 Miss. 600, 79 So. 802, 1918 Miss. LEXIS 102 (Miss. 1918).

§ 7-5-53. To assist district attorneys.

The Attorney General shall, when required by the public service or when directed by the Governor, in writing, repair in person, or by any regular or specially designated assistant, to any county or district in the state and assist the district attorney there in the discharge of his duties and in any prosecution against a state officer, and shall have the same right as the district attorney to enter the grand jury room while the grand jury is in session and to perform such services with reference to the work of the grand jury as the district attorney is authorized by law to perform.

HISTORY: Codes, 1892, § 184; 1906, § 190; Hemingway's 1917, § 3478; 1930, § 3674; 1942, § 3845; Laws, 1988, ch. 511, § 5, eff from and after July 1, 1988.

Cross References — Authority of the Attorney General to prosecute white-collar crime, see § 7-5-54.

District attorneys, generally, see §§ 25-31-1 et seq.

District attorneys prosecuting suit as though suit were instituted by attorney general, see § 25-31-11.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.

1. In general.

The words "in writing" in § 7-5-53, which provides that "when required by the public service or when directed by the Governor, in writing," the Attorney General shall assist the district attorney in the discharge of his or her duties, refer only to a directive by the Governor and not when the Attorney General's assistance is required by the public service. Thus, it was not error for an assistant attorney general to assist the district attorney in a prosecution for sale of cocaine merely because he had not been authorized to do so in writing. Bush v. State, 585 So. 2d 1262, 1991 Miss. LEXIS 589 (Miss. 1991).

2. Applicability.

No statute authorized the Attorney General to prosecute a murder case in the place and stead of the district attorney, who had made a decision not to prosecute. Although Miss. Code Ann. § 7-5-53 permitted the Attorney General to become involved in local prosecutions under certain circumstances, that section did not contemplate the present situation. Williams v. State, 184 So. 3d 908, 2014 Miss. LEXIS 599 (Miss. 2014).

§ 7-5-54. Prosecution of official corruption and other white collar crimes.

(1) In addition to the authority granted in Section 7-5-53, Mississippi Code of 1972, the Attorney General shall prosecute, in person or by his designated staff attorney, criminal matters and cases investigated by him pursuant to the provisions of Section 7-5-59 and he may request the services or assistance of any district attorney in and about such matters or suits. When requested by a district attorney and in the public interest, the Attorney General may, in person or by his designated staff attorney, assist the district attorney in the discharge of his duties. The Attorney General or his designated staff attorney shall have the same right as the district attorney to enter the grand jury room while the grand jury is in session and to perform such services with reference to the work of the grand jury as the district attorney is authorized by law to perform.

(2) The powers of the Attorney General under this section shall not diminish the powers of local authorities to investigate or prosecute any type of white-collar crime violation or any other criminal conduct within their respective jurisdictions, and the provisions of this section shall be in addition to the powers and authority previously granted the Attorney General by common, constitutional, statutory or case law.

HISTORY: Laws, 1988, ch. 511, § 4, eff from and after July 1, 1988.

RESEARCH REFERENCES

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-5-55. To recover taxes.

The attorney general, or any district attorney or county attorney at his request, may bring and prosecute any action in the name of the state to recover the amount of any past due income, inheritance, and privilege taxes and penalties thereon, but any such action shall be brought in the county or district where the taxpayer resides. In case of a nonresident or foreign corporation, the action may be brought in any county where said nonresident or foreign corporation may now be sued in other cases.

HISTORY: Codes, 1930, § 3675; 1942, § 3846; Laws, 1924, chs. 132, 133.

Cross References — Attorney general, district attorneys, or county attorneys appealing tax assessment decisions, see § 11-51-77.

Attorney general giving approval to district attorney to prosecute persons indebted to the state or counties, see § 25-31-17.

Penalties for making false income tax returns and reports, see § 27-7-87.

Action for recovery of inheritance taxes, see § 27-9-39.

Attorney general giving approval to amount of tax upon settlement of executor's account, see § 27-9-41.

Attorney general bringing suit for enforcement of penalty upon officer who fails to collect local privilege taxes, see § 27-17-499.

§ 7-5-57. To draw papers.

Whenever requested by the governor or other state officer, the attorney general shall prepare proper drafts for contracts, forms, or other writings which may be wanted for the use of the state.

HISTORY: Codes, 1892, § 186, 1906, § 192; Hemingway's 1917, § 3480; 1930, § 3676; 1942, § 3847.

§ 7-5-59. Investigation of official corruption, other white collar crimes, and computer crimes.

(1) The following terms shall have the meanings ascribed to them herein unless the context requires otherwise:

(a) "Computer crimes" means those crimes defined in Chapter 45 of Title 97 and sex offenses involving a computer affecting children as defined in Chapter 5 of Title 97.

(b) "White-collar crime and official corruption" includes crimes chargeable under the following provisions of law:

(i) Paragraphs (b) and (c) of Section 7-5-59(4), which relates to obstruction of white-collar crime investigations.

(ii) Section 97-7-10, which relates to the defrauding of state and local governments.

(iii) Section 97-19-73, which relates to fraud by mail, wire, radio or television.

(iv) Section 97-9-10, which relates to commercial bribery.

(v) Section 97-45-3, which relates to computer fraud.

(vi) Sections 97-11-25 through 97-11-31, which relate to embezzlement by public officials.

(vii) Section 97-11-33, which relates to extortion by public officials.

(viii) Sections 97-19-5 through 97-19-31, which relate to unlawful procurement or use of credit cards.

(ix) Sections 97-23-1 and 97-23-3, which relate to false, misleading or deceptive advertising.

(x) Sections 97-15-3 and 97-15-5, which relate to bribery of members and employees of the Highway Commission and the defrauding of the state by Highway Commission members, employees or highway contractors.

(xi) Section 97-9-5, which relates to bribery of jurors.

(xii) Sections 97-11-11, 97-11-13 and 97-11-53, which relate to acceptance of bribes by public officials and bribery of public officials.

(xiii) Sections 97-13-1 and 97-13-3, which relate to bribery of electors or election officials.

(xiv) Sections 97-23-19 through 97-23-27, which relate to embezzlement.

(c) "White-collar crime investigations" means an investigation into any illegal act or acts defined as white-collar crime.

(d) "Computer crimes investigations" means an investigation into any illegal act or acts defined as computer crime.

(e) "Person" means and includes not only an individual, but also a partnership, corporation, professional firm, nonprofit organization or other business entity.

(2) The Attorney General is hereby authorized to conduct official corruption investigations and such other white-collar crime investigations and computer crime investigations that are of statewide interest or which are in the protection of public rights.

(3)(a) In conducting white-collar crime and computer crime investigations, the Attorney General shall have the authority to issue and serve subpoenas to any person in control of any designated documents for the production of such documents, including, but not limited to, writings, drawings, graphs, charts, photographs, phono-records, subscriber records and other data compilations from which information can be obtained, or translated through detection devices into reasonably usable form. Such subpoenas shall require the named person, his agent or attorney, to appear and deliver the designated documents to a location in the county of his residence unless the court for good cause shown directs that the subpoena be issued for the person to deliver such documents to a location outside of the county of his residence. Mere convenience of the Attorney General shall not be considered good cause. The Attorney General or his designee shall have the authority to inspect and copy such documents. Such subpoenas shall be issued only upon the ex parte and in camera application of the Attorney General to the circuit or chancery court of the county of residence of the person in control of the documents or the circuit or chancery court of the county where the person in control of the documents may be found, and only upon a showing that the documents sought are relevant to a criminal investigation under this section or may lead to the discovery of such relevant evidence. Thereafter said court shall have jurisdiction to enforce or quash such subpoenas and to enter appropriate orders thereon, and nothing contained in this section shall affect the right of a person to assert a claim that the information sought is privileged by law.

(b) A subpoena issued pursuant to this subsection shall be in substantially the following form:

"SUBPOENA TO PRODUCE DOCUMENTS PURSUANT TO AN INVESTIGATION BY THE ATTORNEY GENERAL

TO:

YOU ARE HEREBY COMMANDED to appear before the Attorney General of the State of Mississippi or his designated staff attorney at the place, date and time specified below in an investigation being conducted by the Attorney General pursuant to Section 7-5-59, Mississippi Code of 1972:

Place ________ Date and Time ________

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).

____

You are advised that the ________ Court of the ________ Judicial District of ________ County, Mississippi, has approved the ex parte and in camera application of the Attorney General to issue this subpoena, and jurisdiction to enforce and/or quash the subpoena and to enter appropriate orders thereon is statutorily vested in the said court; enforcement and penal provisions applicable to an Attorney General's investigation include those set forth in Section 7-5-59(4), Mississippi Code of 1972; and disclosure of testimony and/or records coming into possession of the Attorney General pursuant to this subpoena shall be limited by and subject to the provisions of Section 7-5-59(6), Mississippi Code of 1972, (for informational purposes, these cited statutes are reproduced on the reverse side of this subpoena).

You may wish to consult an attorney in regard to this subpoena. You have certain state and federal constitutional rights, including your protection against self-incrimination and unreasonable search and seizure which this subpoena may affect.

ISSUED BY AND UNDER SEAL OF THE ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI, this the ________ day of ________, 20 ____.

(SEAL) ________"

(c) Following service of any subpoena, pursuant to the provisions of this subsection, a record of the return shall be made and kept by the Attorney General and subject only to such disclosure as may be authorized pursuant to the provisions of this section.

(4) Enforcement and penal provisions applicable to an investigation under this section shall include the following:

(a) If a person who has been served with a subpoena, which has been issued and served upon him in accordance with the provisions of this section, shall fail to deliver or have delivered the designated documents at the time and place required in the subpoena, on application of the Attorney General the circuit or chancery court having approved the issuance of the subpoena may issue an attachment for such person, returnable immediately, or at such time and place as the court may direct. Bond may be required and fine imposed and proceedings had thereon as in the case of a subpoenaed witness who fails to appear in circuit or chancery court.

(b) Every person who shall knowingly and willfully obstruct, interfere with or impede an investigation under this section by concealing or destroying any documents, papers or other tangible evidence which are relevant to an investigation under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(c) Every person who shall knowingly and willfully endeavor, by means of bribery, force or intimidation, to obstruct, delay or prevent the communication of information to any agent or employee of the Office of the Attorney General or who injures another person for the purpose of preventing the communication of such information or an account of the giving of such information relevant to an investigation under this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(d) The provisions of paragraphs (a), (b) and (c) of this subsection shall not prohibit the enforcement of, or prosecution under, any other statutes of this state.

(5)(a) If any person shall refuse, or is likely to refuse, on the basis of his privilege against self-incrimination, produce the designated documents as requested by a subpoena issued under this section or issued by a court, the Attorney General may request the court, ex parte and in camera, to issue an order requiring such person to produce the documents information which he refuses to give or provide on the basis of his privilege against self-incrimination. The Attorney General may request said order under this subsection when, in his judgment:

(i) The documents sought from such individual may be necessary to the public interest; and

(ii) Such individual has refused or is likely to refuse to produce the designated document on the basis of his privilege against self-incrimination.

Following such request, an order shall issue in accordance with this section requiring such person to produce the documents which he refuses to produce on the basis of his privilege against self-incrimination.

(b) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to produce documents, and the court issues to the witness an order under paragraph (a) of this subsection, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination, but no documents or information compelled under the aforesaid order, or any information directly or indirectly derived from such documents may be used against the witness in any criminal proceeding, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(6) Documents in the possession of the Attorney General gathered pursuant to the provisions of this section and subpoenas issued by him shall be maintained in confidential files with access limited to prosecutorial and other law enforcement investigative personnel on a "need-to-know" basis and shall be exempt from the provisions of the Mississippi Public Records Act of 1983, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, such documents shall be subject to such disclosure as may be required pursuant to the applicable statutes or court rules governing the trial of any such judicial proceeding.

(7) No person, including the Attorney General, a member of his staff, prosecuting attorney, law enforcement officer, witness, court reporter, attorney or other person, shall disclose to an unauthorized person documents, including subpoenas issued and served, gathered by the Attorney General pursuant to the provisions of this section, except that upon the filing of an indictment or information, or upon the filing of an action for recovery of property, funds or fines, or in other legal proceedings, such documents shall be subject to such disclosure as may be required pursuant to applicable statutes and court rules governing the trial of any such judicial proceeding. In event of an unauthorized disclosure of any such documents gathered by the Attorney General pursuant to the provisions of this section, the person making any such unauthorized disclosure shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or imprisonment of not more than six (6) months, or by both such fine and imprisonment.

(8) The powers of the Attorney General under this section shall not diminish the powers of local authorities to investigate or prosecute any type of white-collar crime violation, computer crime violation or any other criminal conduct within their respective jurisdictions, and the provisions of this section shall be in addition to the powers and authority previously granted the Attorney General by common, constitutional, statutory or case law.

(9) No person, agent or employee upon whom a subpoena is served pursuant to this section shall disclose the existence of the investigation to any person unless such disclosure is necessary for compliance with the subpoena. Any person who willfully violates this subsection shall be guilty of a misdemeanor and may be confined in the county jail for a period not to exceed one (1) year or fined not more than Ten Thousand Dollars ($10,000.00), or both.

HISTORY: Former § 7-5-59 [Codes, 1942, § 3828-11; Laws, 1964, ch. 331; Laws, 1968, ch. 358, § 1] Repealed by Laws, 1981, § 58. New § 7-5-59 enacted by Laws, 1988, ch. 511, § 1; Laws, 2009, ch. 387, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint

Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the fourth paragraph of (3)(b). The word "atutes " was changed to "statutes" in the last sentence. The Joint Committee ratified the correction at its July 13, 2009, meeting.

Editor's Notes — A former § 7-5-59 [Codes, 1942, § 3828-11; Laws, 1964, ch. 331; Laws, 1968, ch. 358, § 1]; Repealed by Laws, 1981, § 58.] authorized the attorney general to establish a training course for justices of the peace. For similar provisions, see § 9-11-3.

Cross References — Authority of the Attorney General to prosecute white-collar crime, see § 7-5-54.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR.

Criminal liability of attorney for tampering with evidence. 49 A.L.R.5th 619.

Law Reviews.

Ray, Constitutional and statutory authority of the Attorney General to prosecute actions. 59 Miss. L. J. 165, Spring, 1989.

§ 7-5-61. Books of account and deposit of funds; funding of agency expenses; deposit of monies into State General Fund.

(1) In addition to the keeping of the general docket as hereinabove required, the Attorney General shall keep in his office a comprehensive set of books showing all receipts and disbursement of funds received by the office from whatever source, including appropriations by the Legislature, the contingent fund, and other funds. He shall deposit all funds received by his office in a state depository in his name as Attorney General of the State of Mississippi, shall not commingle or mix any funds received by him in his official capacity with his personal funds or other funds, and shall make disbursement and distribution thereof within the time and in the manner required by law of state officers. The receipt of funds by the Attorney General pending litigation or final determination as to the proper distribution thereof may be held until such adjudication or determination.

(2) From and after July 1, 2016, the Office of the Attorney General shall not charge another state agency a fee, assessment, or other charge for services or resources received by that agency from the Attorney General.

(3) From and after July 1, 2016, the expenses of the Office of the Attorney General shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

HISTORY: Codes, 1930, § 3678; 1942, § 3849; Laws, 1929, ch. 15; Laws, 1970, ch. 516, § 1; Laws, 2016, ch. 459, § 68, eff from and after July 1, 2016.

Editor's Notes — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 7-5-63. Reports to the legislature.

The attorney general shall make reports at the beginning of each regular session of the legislature, of the condition of the public service as administered in his office and under his supervision; and he shall, as a part of his reports, make any recommendation that he may deem proper for the improvement of the service. Not later than the first week of each regular session, he shall file a complete report with the legislature of all moneys received and disbursed by him during the year.

HISTORY: Codes, 1892, § 187; Laws, 1906, § 193; Hemingway's 1917, § 3481; 1930, §§ 3678, 3679; 1942, §§ 3849, 3850; Laws, 1929, ch. 15; Laws, 1970, ch. 516, § 1, eff from and after July 1, 1970.

§ 7-5-65. Saving statute.

Nothing in this chapter contained shall repeal any of the provisions of chapter 235, laws 1920, in reference to making claim for and recovery of taxes illegally collected by the U.S. government on property in this state.

HISTORY: Codes, 1930, § 3680; 1942, § 3851.

§ 7-5-66. Prepayment of costs in civil actions for recovery of delinquent sums owed to Mississippi Guaranteed Student Loan Program.

The Attorney General is hereby authorized, in his discretion, and on a case by case basis, to prepay all such court costs and filing fees, as are otherwise required of private litigants, when commencing and prosecuting civil actions for the collection and recovery of delinquent sums owed to the Mississippi Guarantee Student Loan Program.

HISTORY: Laws, 1986, ch. 324, eff from and after passage (approved March 14, 1986).

RESEARCH REFERENCES

Am. Jur.

7 Am. Jur. 2d, Attorney General §§ 15 et seq.

CJS.

7A C.J.S., Attorney General §§ 74-78.

§ 7-5-67. Investigators of Public Integrity Division empowered to make arrests, serve and execute search warrants, and serve process.

Persons employed by the Attorney General as investigators in the Public Integrity Division whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal laws of this state shall be empowered to make arrests and to serve and execute search warrants and other valid legal process anywhere within the State of Mississippi.

HISTORY: Laws, 1994, ch. 584, § 1, eff from and after passage (approved April 8, 1994).

INSURANCE INTEGRITY ENFORCEMENT BUREAU

Sec.

7-5-301. Insurance Integrity Enforcement Bureau; creation; purpose.
7-5-303. Definitions; prohibited activities.
7-5-305. Funding of bureau; formula; use of monies in Insurance Integrity Enforcement Fund; funding of agency expenses; deposit of user charges and fees authorized under this section into State General Fund.
7-5-307. Whistleblowers; information to be provided; investigations; prosecution of violations; notice of disposition of files; report.
7-5-309. Violations; offenses; penalties; assessment of costs.
7-5-311. Repealed.

§ 7-5-301. Insurance Integrity Enforcement Bureau; creation; purpose.

There is created within the Office of the Attorney General an Insurance Integrity Enforcement Bureau. The duty of the bureau is to investigate and prosecute claims of insurance abuses and crimes involving insurance. The Attorney General may employ the necessary personnel to carry out the provisions of Sections 7-5-301 through 7-5-311.

HISTORY: Laws, 1998, ch. 561, § 1; reenacted without change, Laws, 2000, ch. 424, § 1; reenacted without change, Laws, 2003, ch. 439, § 1, eff from and after July 1, 2003.

§ 7-5-303. Definitions; prohibited activities.

(1) As used in this section:

(a) "An insurance plan" means a plan or program that provides health benefits whether directly through insurance or otherwise and includes a policy of life or property and casualty insurance, a contract of a service benefit organization, workers' compensation insurance or any program or plan implemented in accordance with state law or a membership agreement with a health maintenance organization or other prepaid programs.

(b) "Insurance official" means:

(i) An administrator, officer, trustee, fiduciary, custodian, counsel, agent or employee of any insurance plan;

(ii) An officer, counsel, agency or employee of an organization, corporation, partnership, limited partnership or other entity that provides, proposes to, or contracts to provide services through any insurance plan; or

(iii) An official, employee or agent of a state or federal agency having regulatory or administrative authority over any insurance plan.

(2) A person or entity shall not, with the intent to appropriate to himself or to another any benefit, knowingly execute, collude or conspire to execute or attempt to execute a scheme or artifice:

(a) To defraud any insurance plan in connection with the delivery of, or payment for, insurance benefits, items, services or claims; or

(b) To obtain by means of false or fraudulent pretense, representation, statement or promise money, or anything of value, in connection with the delivery of or payment for insurance claims under any plan or program or state law, items or services which are in whole or in part paid for, reimbursed, subsidized by, or are a required benefit of, an insurance plan or an insurance company or any other provider.

(3) A person or entity shall not directly or indirectly give, offer or promise anything of value to an insurance official, or offer or promise an insurance official to give anything of value to another person, with intent to influence such official's decision in carrying out any of his duties or laws or regulations.

(4) Except as otherwise allowed by law, a person or entity shall not knowingly pay, offer, deliver, receive, solicit or accept any remuneration, as an inducement for referring or for refraining from referring a patient, client, customer or service in connection with an insurance plan.

(5) A person or entity shall not, in any matter related to any insurance plan, knowingly and willfully falsify, conceal or omit by any trick, scheme, artifice or device a material fact, make any false, fictitious or fraudulent statement or representation or make or use any false writing or document, knowing or having reason to know that the writing or document contains any false or fraudulent statement or entry in connection with the provision of insurance programs.

(6) A person or entity shall not fraudulently deny the payment of an insurance claim.

HISTORY: Laws, 1998, ch. 561, § 2; reenacted without change, Laws, 2000, ch. 424, § 2; reenacted without change, Laws, 2003, ch. 439, § 2, eff from and after July 1, 2003.

JUDICIAL DECISIONS

1. Insurance plan.

Evidence that defendant defrauded an insurance plan was sufficient to sustain her insurance fraud conviction under this section. Dees v. State, 126 So. 3d 21, 2013 Miss. LEXIS 593 (Miss. 2013).

§ 7-5-305. Funding of bureau; formula; use of monies in Insurance Integrity Enforcement Fund; funding of agency expenses; deposit of user charges and fees authorized under this section into State General Fund.

(1) To fund the Insurance Integrity Enforcement Bureau, the Workers' Compensation Commission may assess each workers' compensation carrier and self-insurer, in the manner provided in Section 71-3-99, an amount based upon the proportion that the total gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period bore to the total gross claims for compensation and medical services and supplies paid by all carriers and self-insurers during such period. The total amount assessed and collected by the commission from all workers' compensation carriers and self-insurers used to fund the Insurance Integrity Enforcement Bureau during each fiscal year shall be based upon the recommendation of the Insurance Integrity Enforcement Bureau, but shall not exceed One Hundred Fifty Thousand Dollars ($150,000.00). The funds received from the assessment in this subsection (1) shall be used primarily for the purpose of investigating and prosecuting workers' compensation fraud. Within thirty (30) days of receipt, the Workers' Compensation Commission shall transfer such assessment from the Administrative Expense Fund into a special fund of the Office of the Attorney General created in the State Treasury and designated as the "Insurance Integrity Enforcement Fund."

(2) In addition to the monies collected under the assessment provided in this section to fund the Insurance Integrity Enforcement Bureau, for fiscal year 1999 the sum of One Hundred Fifty Thousand Dollars ($150,000.00) shall be appropriated by the Legislature to the Insurance Integrity Enforcement Fund from the State General Fund. The funds received from the appropriation in this subsection (2) shall be used primarily for the purpose of investigating and prosecuting insurance fraud other than workers' compensation fraud.

(3) The Insurance Integrity Enforcement Bureau may accept gifts, grants and appropriations of state and federal funds for deposit in the Insurance Integrity Enforcement Fund. The Insurance Integrity Enforcement Fund shall be used solely to defray the expenses of the Insurance Integrity Enforcement Bureau, and any interest earned on monies in such fund shall be credited to the fund. Expenditures from the Insurance Integrity Enforcement Fund shall be made upon requisition by the Attorney General and subject to appropriation by the Legislature.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 1998, ch. 561, § 3; reenacted without change, Laws, 2000, ch. 424, § 3; reenacted without change, Laws, 2003, ch. 439, § 3; Laws, 2017, 1st Ex Sess, ch. 7, § 7, eff from and after passage (approved June 23, 2017).

§ 7-5-307. Whistleblowers; information to be provided; investigations; prosecution of violations; notice of disposition of files; report.

(1) If any workers' compensation provider, health insurance provider, employee of the Workers' Compensation Commission or other person or entity has a belief or has any information that a false or misleading statement or representation or fraud or fraudulent denial has been made in connection with or relating to a workers' compensation claim or in connection with or relating to any insurance claim in relation to an insurance plan as defined in Section 7-5-303, such person or entity may report such belief to the Insurance Integrity Enforcement Bureau, furnish any information which may be pertinent and cooperate in an investigation conducted by the bureau. Investigators for the Insurance Integrity Enforcement Bureau are authorized law enforcement officers and they are authorized to investigate and exercise such powers as are granted to other authorized law enforcement officers; however, the Insurance Integrity Enforcement Bureau and its investigators and personnel shall not have any authority to impede, interfere with or control the operations and functions of the Mississippi Workers' Compensation Commission.

(2) Prosecutions for violations under Sections 7-5-301 through 7-5-311 or for violations of any other criminal law arising from cases of insurance fraud, may be instituted by the Attorney General, his designee or the district attorney of the district in which the violation occurred, and shall be conducted in the name of the State of Mississippi. In the prosecution of any criminal proceeding in accordance with this subsection by the Attorney General, or his designee, and in any proceeding before a grand jury in connection therewith, the Attorney General, or his designee, shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized or required to exercise or perform. The Attorney General, or his designee, shall have the authority to issue and serve subpoenas in the investigation of any matter which may violate Sections 7-5-301 through 7-5-311 or any matter relating to insurance fraud which may violate any criminal law.

(3) The Attorney General, or his designee, shall notify the Workers' Compensation Commission when the Insurance Integrity Enforcement Bureau opens or closes or otherwise disposes of an investigative file relating to workers' compensation fraud. Such notification shall be confidential and shall not be subject to release to any third party except as otherwise provided by law. After such notification, it is solely within the discretion of the Mississippi Workers' Compensation Commission whether to modify or alter the proceedings in any such workers' compensation claims from the normal course of proceedings.

(4) On or before January 1 of each year, the Insurance Integrity Enforcement Bureau shall file a report with the Senate and House of Representatives

Insurance Committees detailing its work during the preceding calendar year and shall include the following:

(a) The number and types of cases or complaints reported to the bureau;

(b) The number and types of cases assigned for investigation;

(c) The number of criminal warrants issued and the types of cases;

(d) The number and types of cases referred to a district attorney for prosecution;

(e) The number and types of cases retained by the Attorney General for prosecution;

(f) The number and types of cases closed without prosecution;

(g) The number and types of cases closed by the district attorney without prosecution;

(h) The number and types of cases pending; and

(i) The amount of actual expenses of the bureau during the preceding year classified by the types of cases.

(5) The jurisdiction of the Insurance Integrity Enforcement Bureau shall not infringe upon any matters under the jurisdiction of the Medicaid Fraud Control Unit created in Section 43-13-201 et seq.

HISTORY: Laws, 1998, ch. 561, § 4; reenacted without change, Laws, 2000, ch. 424, § 4; reenacted without change, Laws, 2003, ch. 439, § 4, eff from and after July 1, 2003.

§ 7-5-309. Violations; offenses; penalties; assessment of costs.

(1) A person who violates any provision of Section 7-5-303 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than three (3) years, or by a fine of not more than Five Thousand Dollars ($5,000.00) or double the value of the fraud, whichever is greater, or both. Sentences imposed for convictions of separate offenses under this section may run consecutively.

(2) If the defendant found to have violated any provisions of Section 7-5-303 is an organization, then it shall be subject to a fine of not more than One Hundred Fifty Thousand Dollars ($150,000.00) for each violation. "Organization" for purposes of this subsection means a person other than an individual. The term includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof and nonprofit organizations.

(3) In a proceeding for violations under Section 7-5-303, the court, in addition to the criminal penalties imposed under this section, shall assess against the defendant convicted of such violation double those reasonable costs that are expended by the Insurance Integrity Enforcement Bureau of the Office of Attorney General or the district attorney's office in the investigation of such case, including, but not limited to, the cost of investigators, process service, court reporters, expert witnesses and attorney's fees. A monetary penalty assessed and levied under this section shall be deposited to the credit of the State General Fund, and the Attorney General may institute and maintain

proceedings in his name for enforcement of payment in the circuit court of the county of residence of the defendant and, if the defendant is a nonresident, such proceedings shall be in the Circuit Court of the First Judicial District of Hinds County, Mississippi.

HISTORY: Laws, 1998, ch. 561, § 5; reenacted without change, Laws, 2000, ch. 424, § 5; reenacted without change, Laws, 2003, ch. 439, § 5, eff from and after July 1, 2003.

§ 7-5-311. Repealed.

Repealed by Laws, 2003, ch. 439, § 6, eff from and after July 1, 2003.

§ 7-5-311. [Laws, 1998, ch. 561, § 6; Laws, 2000, ch. 424, § 6, eff from and after July 1, 2000.]

Editor's Notes — Former § 7-5-311 repealed §§ 7-5-301 through 7-5-309, effective July 1, 2003.

CHAPTER 7.

STATE FISCAL OFFICER; DEPARTMENT OF AUDIT

Article 1. State Fiscal Officer. 7-7-1
Article 3. Department of Audit. 7-7-201

ARTICLE 1.

STATE FISCAL OFFICER.

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§ 7-7-1. Definitions.

(1) As used in this chapter, the terms "State Auditor" and "Auditor" mean the Auditor of Public Accounts.

(2) As used in this chapter, the term "State Fiscal Officer" means the official created in Section 27-104-5, acting through the Bureau of Budget and Fiscal Management.

(3) "Agency" means any state board, commission, committee, council, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

(4) For the purposes of Sections 7-7-1 through 7-7-65, the term "public funds" shall mean all funds which are received, collected by, or available for the support of or expenditure by any state department, institution or agency, whether such funds be derived from taxes or from fees collected by such state department, institution or agency or from some other source, and which should be included in the entity of the state under generally accepted accounting principles, although such funds may not be required by law to be deposited in the State Treasury.

Funds such as endowment funds and research funds, special building and plant funds, funds of a proprietary function, and the like shall be excluded from the meaning of the term, unless specifically required by law to be handled through the State Treasury or unless deemed necessary by the State Fiscal Officer to be included.

All funds of state departments, institutions and agencies within the contemplation of this section that are not required by law to be deposited in the State Treasury, or are not declared to be exempt from the provisions of Sections 7-7-1 through 7-7-65 by the State Fiscal Officer shall be reported to the State Fiscal Officer in reports of revenues, expenditures, assets, liabilities, encumbrances, fund balances and other financial statements, at such times and in the form required by the State Fiscal Officer.

It is hereby declared to be the intent of this section to provide that all "public funds" necessary to present a complete and comprehensive statement of the fiscal operations of the state government shall be handled through the State Fiscal Officer, whether through State Fiscal Officer receipt warrants and disbursement warrants, as is generally provided, or through the method of reporting, as required herein.

HISTORY: Codes, 1942, § 3852-03; Laws, 1962, ch. 483, § 3; Laws, 1983, ch. 422, § 8; Laws, 1984, ch. 488, § 91; Laws, 1989, ch. 532, § 1, eff from and after July 1, 1989.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Establishment of general accounting system, see § 7-7-9.

Issuance of warrants for payment of claims, see § 7-7-35.

Payment of public funds into state treasury by state officials, see § 7-9-21.

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Duties of the state auditor (now the Executive Director of the Department of Finance and Administration) with respect to implementation by counties of countywide road administration, inventory control system, central purchasing system, and countywide personnel administration, see § 19-2-11.

Annual auditing of municipalities, see § 21-35-31.

Provision that an Auditor of Public Accounts (now the Executive Director of the Department of Finance and Administration) shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Creation of Executive Director of Department of Finance and Administration, see § 27-104-5.

State depositories, see §§ 27-105-1 et seq.

Nonappropriated funds of Mississippi Industries for the Blind, see § 43-3-111.

Duty to print arrest tickets under the Uniform Arrest Ticket Law, see § 63-9-21.

JUDICIAL DECISIONS

1. Entities subject to auditor oversight.

Where plaintiff Mississippi Veterans Home Purchase Board, a former mortgage lender, filed suit against defendant insurer in state court and the insurer removed the action, because the board was initially state-funded and nothing prevented further such apportionments, the board was an arm of the state and not a "citizen" under 28 U.S.C.S. § 1332 for diversity jurisdiction. Miss. Veterans Home Purchase Bd. v. State Farm Fire & Cas. Co., 492 F. Supp. 2d 579, 2007 U.S. Dist. LEXIS 45606 (S.D. Miss. 2007).

OPINIONS OF THE ATTORNEY GENERAL

All funds not required by law to be deposited in State Treasury, shall, under Miss. Code Section 7-7-1(4), be reported to State Fiscal Officer in reports of revenues, expenditures, assessments and liabilities at such times and in form required by State Fiscal Officer. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

Decision as to how state resources should be allocated for capital expenditures property lies with state legislature; until such time as legislature authorizes expenditure of funds to construct Sports Hall of Fame, all public funds must be accounted for as provided in Miss. Code Section 7-7-1. Ross, Jan. 3, 1993, A.G. Op. #92-1016.

The Commercial Mobile Radio Service Board is not a state agency, though it is an instrumentality of the state. McDow, May 28, 1999, A.G. Op. #99-0239.

§ 7-7-2. Transfer of functions of state fiscal management board to state fiscal officer.

(1) The Mississippi General Accounting Office and the State Fiscal Officer, acting through the Bureau of Budget and Fiscal Management, shall be the Department of Public Accounts formerly in the Office of the State Auditor of Public Accounts.

(2) The words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear in Sections 5-1-57, 5-1-59, 5-3-23, 7-1-33, 7-1-63, 7-3-29, 7-5-31, 7-11-25, 17-13-11, 9-1-36, 9-3-7, 9-3-23, 9-3-27, 9-3-29, 9-3-45, 11-35-11, 11-45-1, 21-33-47, 21-33-401, 23-5-215, 25-1-75, 25-1-81, 25-1-95, 25-1-98, 25-3-41, 25-3-51, 25-3-53, 25-3-55, 25-3-57, 25-3-59, 25-3-97, 25-7-7, 25-7-83, 25-9-135, 25-31-8, 25-31-10, 25-31-37, 27-1-35, 27-3-43, 27-3-45, 27-3-57, 27-3-59, 27-5-22, 27-5-103, 27-7-45, 27-7-313, 27-9-49, 27-11-3, 27-13-55, 27-15-203, 27-15-239, 27-15-241, 27-21-13, 27-29-1, 27-29-5, 27-29-11, 27-29-13, 27-29-15, 27-29-17, 27-29-25, 27-29-33, 27-31-109, 27-33-11, 27-33-41, 27-33-45, 27-33-47, 27-35-121, 27-35-149, 27-37-303, 27-39-13, 27-39-319, 27-41-19, 27-41-23, 27-41-25, 27-41-27, 27-41-41, 27-41-75, 27-45-1, 27-45-13, 27-45-19, 27-49-5, 27-49-9, 27-55-19, 27-55-47, 27-55-555, 27-57-35, 27-59-51, 27-65-51, 27-65-53, 27-67-29, 27-69-3, 27-69-73, 27-69-77, 27-71-301, 27-71-305, 27-71-339, 27-73-1, 27-73-7, 27-73-11, 27-103-55, 27-103-67, 27-105-7, 27-105-19, 27-105-21, 27-105-23, 27-105-33, 27-107-11, 27-107-59, 27-107-81, 27-107-101, 27-107-121, 27-107-141, 27-107-157, 27-107-173, 29-1-27, 29-1-79, 29-1-85, 29-1-87, 29-1-93, 29-1-95, 29-1-111, 31-3-17, 31-7-9, 31-9-15, 31-17-3, 31-17-59, 31-17-105, 31-19-17, 31-19-19, 31-19-21, 31-19-23, 31-5-15, 33-9-11, 35-7-45, 35-9-3, 35-9-5, 35-9-27, 35-9-29, 35-9-33, 37-3-7, 37-3-15, 37-3-17, 37-3-39, 37-13-33, 37-19-27, 37-19-29, 37-19-45, 37-19-47, 37-25-27, 37-27-17, 37-29-165, 37-31-41, 37-33-31, 37-33-71, 37-43-47, 37-101-103, 37-101-149, 37-109-25, 37-113-5, 37-133-7, 39-1-31, 39-3-109, 41-3-13, 41-4-19, 41-7-25, 41-73-71, 43-9-35, 43-13-113, 43-29-29, 45-1-11, 45-1-23, 47-5-77, 47-5-155, 49-1-65, 49-5-21, 49-5-97, 49-17-69, 49-19-1, 51-33-77, 51-33-79, 51-33-81, 51-33-87, 53-1-77, 55-3-41, 57-4-21, 57-9-5, 57-10-123, 57-13-7, 57-13-19, 57-15-5, 59-5-53, 59-7-103, 59-9-71, 59-17-47, 63-19-51, 65-1-111, 65-1-117, 65-9-9, 65-9-17, 65-9-25, 65-11-43, 65-11-45, 65-23-107, 65-26-7, 65-26-35, 69-9-5, 69-15-113, 71-5-359, 73-5-5, 73-6-9, 73-19-13, 73-36-17, 75-75-109, 77-3-89, 77-9-493, 77-11-201, 81-1-49, 83-1-13, 83-1-37, 83-1-39, 83-43-7, 83-43-21, 89-11-27, 97-11-29, 97-21-1, 97-21-61 and 99-15-19, Mississippi Code of 1972.

HISTORY: Laws, 1984, ch. 488, § 90; Laws, 1985, ch. 455, § 1; Laws, 1986, ch. 499, § 1; Laws, 1989, ch. 532, § 2; Laws, 1999, ch. 461, § 35; Laws, 2017, ch. 404, § 5, eff from and after July 1, 2017; Laws, 2018, ch. 395, § 11, eff from and after July 1, 2018.

Editor's Notes — Section 5-1-57 referred to in subsection (2) was repealed by Laws of 1983, ch. 329, § 4, eff from and passage (approved March 9, 1983).

Section 5-3-23 referred to in subsection (2) was repealed by Laws of 1973, ch. 331, § 12, eff from and after passage (approved March 19, 1973).

Section 23-5-215 referred to in subsection (2) was repealed by Laws of 1986, ch. 495, § 335, eff from and after January 1, 1987.

Section 25-31-37 referred to in subsection (2), was repealed by Laws of 1992, ch. 396, § 11, eff from and after passage (approved April 27, 1992).

Section 27-1-35 referred to in subsection (2), was repealed by Laws of 1984, ch. 478, § 34, eff from and after July 1, 1984

Section 27-5-22 referred to in subsection (2), was repealed by Laws of 2009, ch. 546, § 24, effective upon passage, April 15, 2009.

Section 27-11-3 referred to in subsection (2), was repealed by Laws of 1989, ch. 479, § 2, eff from and after July 1, 1989.

Section 27-39-13 referred to in subsection (2) was repealed by Laws of 1980, ch. 505, § 24 (as amended by Laws of 1981, 1st Ex. Sess., ch. 5, § 1), eff September 30, 1982.

Section 27-103-55 referred to in subsection (2) was repealed by Laws of 1984, ch. 488, § 334, eff from and after July 1, 1984.

Section 27-103-67 referred to in subsection (2) was repealed by Laws of 1984, ch. 488, § 334, eff from and after July 1, 1984.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Sections 31-19-19 and 31-19-23, referred to in subsection (2), were repealed by Laws of 1986, ch. 317, eff from and after passage (approved March 13, 1986).

Section 35-9-3 referred to in subsection (2) was repealed by Laws of 1992, ch. 396, § 12, eff from and after passage (approved April 27, 1992)

Sections 35-9-29 and 35-9-33, referred to in subsection (2), were repealed by Laws of 1992, ch. 396, § 12, eff from and after passage (approved April 27, 1992).

Section 37-3-15 refered to in subsection (2) was repealed by Laws of 1982, Ex. Sess., ch. 17, § 43, eff from and after July 1, 1984.

Section 37-3-17 referred to in subsection (2) was repealed by Laws of 1982, Ex. Sess., ch. 17, § 43, eff from and after July 1, 1984.

Section 37-19-29 referred to in subsection (2) was repealed by Laws of 1997, Ex. Sess., ch. 612, § 30, eff from and after July 1, 2002.

Section 37-109-25 referred to in subsection (2) was repealed by Laws of 1991, ch. 547, § 12, eff from and after July 1, 1991.

Section 39-1-31 referred to in subsection (2) was repealed by Laws of 1989, ch. 321, § 7, eff from and after July 1, 1989.

Section 41-3-13 referred to in subsection (2) was repealed by Laws of 1980, ch. 465, § 6, eff from and after July 1, 1980.

Section 41-7-25 referred to in subsection (2) was repealed by Laws of 1986, ch. 437, § 6, eff from and after July 1, 1986.

Sections 57-13-7 and 57-13-19, referred to in subsection (2), were repealed by Laws of 1988, ch. 518, § 94, eff from and after July 1, 1988.

Sections 65-23-107, referred to in subsection (2), was repealed by Laws of 2007, ch. 582, § 25, eff from and after July 18, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the repeal of these sections).

Sections 81-1-49, referred to in subsection (2), was repealed by Laws of 1980, ch. 312, § 40, eff from and after March 21, 1980.

Laws of 1999, ch. 461, §§ 50, 51, provide as follows:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Amendment Notes — The 2018 amendment deleted "51-5-15" preceding "51-33-77" in (2).

Cross References — Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The term "State Auditor" in Section 49-17-69 refers to and means the State Fiscal Officer as defined in Sections 7-7-2 and 27-104-6. Bryant, Dec. 28, 1999, A.G. Op. #99-0693.

§ 7-7-3. General Accounting Office; funding of agency expenses; deposit of monies into State General Fund.

(1) There is hereby established a General Accounting Office for the State of Mississippi, the powers and duties of said office to be performed by the Bureau of Budget and Fiscal Management under the administration of the State Fiscal Officer.

(2) The Chief of the Fiscal Management Division, under the supervision of the State Fiscal Officer, shall prescribe and implement in the office of each state agency an adequate accrual accounting system, in conformity with generally accepted accounting principles, and a system for keeping other essential financial records or, in lieu thereof, may install a state centralized automated accounting system which facilitates reporting the financial position and operations of the state as a whole, in conformity with generally accepted accounting principles. All such accounting systems so prescribed or installed shall be as uniform as may be practicable for agencies and offices of the same class and character.

Each state agency shall adopt and use the system prescribed and approved for it by the State Fiscal Officer, and the State Fiscal Officer shall have the authority and power to impound all funds of such agency until it complies with the provisions of this section. Said state centralized automated accounting system shall be made available to the agencies of state government through the services of the State Computer Center. The State Fiscal Officer shall conduct training seminars on a regular basis to ensure that agencies have access to persons proficient in the correct use of the statewide automated accounting system.

(3) The State Fiscal Officer shall establish an oversight advisory committee to ensure that the state centralized automated accounting system meets the needs of the agencies served thereby. Said oversight advisory committee shall be composed of qualified public employees proficient in the areas of fiscal management, accounting, data processing and other fields affected by the automated accounting and financial management system. Said committee shall have the following responsibilities:

(a) Provide continual review of laws, rules, regulations, policies and procedures which affect the continued successful implementation of the state automated accounting and financial management system;

(b) Coordination among the control agencies of state and federal government to identify required modifications and/or enhancements to the state centralized automated accounting system as required for successful implementation;

(c) Ensure that agencies using the system are in compliance with the requirements of the various control agencies; and

(d) Assign persons knowledgeable in their area of expertise and proper use of the state centralized automated accounting system to help agencies use the system correctly.

(4) The State Fiscal Officer shall provide for the continuing support of the state centralized automated accounting system from funds appropriated therefor by the Legislature and/or from user fees charged to the state agencies and institutions utilizing the system.

The State Fiscal Officer may charge fees to agencies and institutions for services rendered to them in conjunction with the statewide automated accounting system. The amounts of such fees shall be set by the State Fiscal Officer, and all such fees collected shall be paid into the Statewide Automated Accounting System Fund.

(5) There is hereby established within the State Treasury a special fund to be designated as the Mississippi Management and Reporting System Revolving Fund. This fund is established for the purpose of developing and maintaining an executive information system within state government. Such a system may include the state centralized automated accounting system, a centralized automated human resource/payroll system for state agencies and the automation of performance programmatic data and other data as needed by the legislative and executive branches to monitor the receipt and expenditure of funds in accordance with desired objectives.

A Steering Committee consisting of the State Fiscal Officer, the Executive Director of the State Personnel Board and the Executive Director of the Mississippi Department of Information Technology Services shall establish policies and procedures for the administration of the Mississippi Management and Reporting System Revolving Fund.

All disbursements from this fund shall be made pursuant to appropriation by the Legislature. All interest earned from the investment of monies in this fund shall be credited to such fund.

Any expenditure of funds related to the development of a Mississippi Management and Reporting System by the State Personnel Board, the Department of Finance and Administration and the Mississippi Department of Information Technology Services made during the fiscal year ending June 30, 1993, shall be reimbursable from the Mississippi Management and Reporting System Revolving Fund upon its establishment.

The Bond Commission is hereby authorized to grant a noninterest-bearing loan to the Mississippi Management and Reporting System Revolving Fund from the State Treasurer's General Fund/Special Fund Pool in an amount not to exceed Fifteen Million Dollars ($15,000,000.00).

The Mississippi Management and Reporting System Steering Committee shall appoint an administrator of the Mississippi Management and Reporting System Revolving Fund. The salary of the administrator and all other project administrative expenses shall be disbursed from the revolving fund. The administrator of the fund is hereby authorized to employ or secure personnel service contracts for all personnel required to carry out this project. On or before January 15 of each year, the State Fiscal Officer shall present a report of all expenditures made during the previous fiscal year from the Mississippi Management and Reporting System Revolving Fund to the State Bond Commission and to the Legislature.

Upon implementation of the Mississippi Management and Reporting System, or any part thereof, at any state agency, a repayment schedule shall be determined by the Mississippi Management and Reporting System Revolving Fund administrator for payment back into the Mississippi Management and Reporting System Revolving Fund. This repayment schedule will include direct and indirect expenses of implementing the Mississippi Management and Reporting System at each agency and applied interest charges. Each state agency shall be required to request the amount of its yearly repayment in its annual budget request.

At the completion of the Mississippi Management and Reporting System, the Steering Committee shall recommend to the Legislature an amount to remain in the Mississippi Management and Reporting System Revolving Fund to fund future upgrades and maintenance for the system. The remaining amount, as repaid by the agencies, shall be returned to the General Fund/Special Fund Pool.

Each state agency executive director shall participate in the Mississippi Management and Reporting System (MMRS) project by appointing an agency implementation team leader to represent them on the MMRS project. All agencies will be required to implement the MMRS unless exempted from such by the MMRS Steering Committee. If such an exemption is granted, the MMRS Steering Committee may require selected data to be electronically interfaced into the MMRS.

(6) In addition to his other duties, the Chief of the Fiscal Management Division shall perform the following services:

(a) Maintain a set of control accounts on a double entry accrual basis for each state fund so as to analyze, classify and record all resources, obligations and financial transactions of all state agencies.

(b) Submit to the Governor and to the Legislative Budget Office a monthly report containing the state's financial operations and conditions.

(c) Approve as to form the manner in which all payrolls shall be prepared; and require each state agency to furnish copies of monthly payrolls as required to the State Fiscal Officer. The Chief of the Fiscal Management Division shall study the feasibility of a central payroll system for all state officers and employees, and report his findings and recommendations to the Legislature.

(d) Require of each state agency, through its governing board or executive head, the maintaining of continuous internal audit covering the activities of such agency affecting its revenue and expenditures, and an adequate internal system of preauditing claims, demands and accounts against such agency as to adequately ensure that only valid claims, demands and accounts will be paid, and to verify compliance with the regulations of the State Personal Service Contract Review Board regarding the execution of any personal service or professional service contracts pursuant to Section 25-9-120(3). The Fiscal Management Division shall report to the State Fiscal Officer any failure or refusal of the governing board or executive head of any state agency to comply with the provisions of this section. The State Fiscal Officer shall notify the said board of trustees or executive head of such violation and, upon continued failure or refusal to comply with the provisions of this section, then the State Fiscal Officer may require said board of trustees or executive head of such state agency to furnish competent and adequate personnel to carry out the provisions of this section, who shall be responsible to the State Fiscal Officer for the performance of such function with respect to such state agency. For failure or refusal to comply with the provisions of this section or the directions of the State Fiscal Officer, any such employee may be deprived of the power to perform such functions on behalf of the Fiscal Management Division.

(7) Every state agency, through the proper officials or employee, shall make such periodic or special reports on forms prescribed by the Chief of the Fiscal Management Division as may be required or necessary to maintain the set of control accounts required. If any officer or employee of any state agency whose duty it is to do so shall refuse or fail to make such periodic or special reports in such form and in such detail and within such time as the Fiscal Management Division may require in the exercise of this authority, the State Fiscal Officer shall prepare or cause to be prepared and submitted such reports and the expense thereof shall be personally borne by said officer or employee and he or she shall be responsible on his or her official bond for the payment of the expense. Provided that a negligently prepared report shall be considered as a refusal or failure under the provisions of this section.

(8) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges

and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(9) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Codes, 1942, § 3852-01; Laws, 1962, ch. 483, § 1; Laws, 1984, ch. 488, § 92; Laws, 1986, ch. 499, § 2; Laws, 1989, ch. 532, § 3; Laws, 1993, ch. 485, § 2; Laws, 1997, ch. 609, § 7; Laws, 2016, ch. 459, § 12, eff from and after July 1, 2016.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of finance and Administration."

Chapter 622 of Laws of 1995 (§ 25-53-3) changed the name of the "Central Data Processing Authority" (CDPA) to the "Mississippi Department of Information Technology Services" (MDITS) and provided that wherever the terms "Central Data Processing Authority" and "authority," when referring to the Central Data Processing Authority, are used in any law, the same shall mean the Mississippi Department of Information Technology Services.

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Oath of office, see Miss. Const. Art. 14, § 268.

State bond advisory division, see § 7-1-401.

Direction to maintain a complete system of general accounting, see § 7-7-9.

Issuance of warrants for payment of claims, see § 7-7-35.

Audit of economic development districts, see § 19-5-99.

Duties of Executive Director of the Department of Finance and Administration in creating municipal revolving fund, see § 21-33-401.

Before whom oath of office is taken, see § 25-1-9.

Place of filing of oath of office, see § 25-1-11.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

Issuance of warrants as payment of expenses of department of education, see § 37-3-13.

Issuance of warrants for industrial revolving fund, see § 57-9-5.

Form of tickets under the uniform arrest ticket act, see § 63-9-21.

Provision that the books, documents, records and transactions relating to the receipt of monies with respect to bad check complaints and restitution thereon are subject to audit, see § 97-19-77.

§ 7-7-5. Location and hours of office.

The Bureau of Budget and Fiscal Management of the General Accounting Office shall be located at the seat of government, and the bureau shall be open Monday through Friday of each week for eight (8) hours each day.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 3 (1); 1857, ch. 6, art. 28; 1871, § 129; 1880, § 215; 1892, § 225; 1906, § 235; Hemingway's 1917, § 3494; 1930, § 3722; 1942, §§ 3852, 3852-02; Laws, 1904, ch. 139; Laws, 1962, ch. 483, § 2;

Laws, 1964, ch. 542, § 2; Laws, 1984, ch. 488, § 93; Laws, 1989, ch. 532, § 4, eff from and after July 1, 1989.

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

§ 7-7-7. State fiscal officer to appoint necessary employees; bonds.

The State Fiscal Officer shall appoint such bureau and division heads, contractors and other employees as are necessary for the proper discharge of the duties of the General Accounting Office subject to the provisions of the State Personnel Law. The State Fiscal Officer shall be officially responsible for the acts of all other employees of his office in the same manner as if done by himself.

The State Fiscal Officer shall require bonds of his assistant and other employees at his pleasure. The premiums on said bonds shall be paid for as prescribed elsewhere in the laws of the state.

HISTORY: Codes, 1942, §§ 3852-04, 3867-08; Laws, 1962, ch. 483, § 4; Laws, 1970, ch. 542, § 8; Laws, 1984, ch. 488, § 94; Laws, 1989, ch. 532, § 5, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Oath of office, see Miss. Const. Art. 14, § 268.

Issuance of warrants for payment of claims, see § 7-7-35.

Effect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Before whom oath of office is taken, see § 25-1-9.

Place of filing of oath of office, see § 25-1-11.

Requirement of state officials making guaranty or surety bonds, see § 25-1-13.

Appointment, duties, and oath of department subordinates, see § 25-3-47.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

Criminal penalty for officers failing to take oath or give bond, see § 97-11-41.

JUDICIAL DECISIONS

1. In general.

Administration of public purchasing, administration of state employee's group insurance program, and authority to approve rules adopted by the State Auditor for establishing a merit system for his employees, are administrative functions within the prerogative of the executive department, and thus, named legislators could not constitutionally perform any of those functions because they properly belonged to the executive department; moreover, the statutes vesting those powers in members of the legislature are unconstitutional. Alexander v. State, 441 So. 2d 1329, 1983 Miss. LEXIS 3007 (Miss. 1983).

A deputy auditor is not a constitutional officer and a deputy may be removed at the pleasure of the auditor. State ex rel. Brown v. Christmas, 126 Miss. 358, 88 So. 881, 1921 Miss. LEXIS 44 (Miss. 1921).

§ 7-7-9. General accounting system.

The Mississippi General Accounting Office shall maintain a complete system of general accounting to comprehend the financial transactions of every state department, division, officer, board, commission, institution or other agency owned or controlled by the state, except those agencies specifically exempted in Section 7-7-1, whether at the seat of government or not and whether the funds upon which they operate are channeled through the State Treasury or not, either through regular procedures having to do with the issuance of the State Fiscal Officer receipt warrants and disbursement warrants or through controls maintained through reports filed periodically as required by the State Fiscal Officer in accordance with the reporting provisions contained in said Section 7-7-1.

All transactions in public funds, as defined in Section 7-7-1, shall either be handled directly through the State Fiscal Officer and the State Treasury, or shall be reported to the State Fiscal Officer at the times and in the form prescribed by the State Fiscal Officer and the Legislative Budget Office, so that a complete and comprehensive system of accounts of the fiscal activities of all state governmental agencies shall be made available at all times in the General Accounting Office.

HISTORY: Codes, 1942, § 3852-05; Laws, 1962, ch. 483, § 5; Laws, 1984, ch. 488, § 95; Laws, 1989, ch. 532, § 6, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Authority to require reports from departments of state government necessary to maintain record of accounts for every county, school district, municipality and other districts, see § 7-7-55.

Joint legislative budget committee and legislative budget office, generally, see § 27-103-101 et seq.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

§ 7-7-11. Penalty for failure to make required reports.

If any officer or employee of any state agency shall refuse or fail to make any report to the State Fiscal Officer or the Legislative Budget Office as required herein or in the manner prescribed by the said State Fiscal Officer, the State Fiscal Officer shall proceed to make, or cause to be made, the said report. The expense thereof shall be personally borne by said officer or employee, and he or she shall be responsible on his or her official bond for the expense so incurred.

HISTORY: Codes, 1942, § 3852-06; Laws, 1962, ch. 483, § 6; Laws, 1984, ch. 488, § 96; Laws, 1989, ch. 532, § 7, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal

Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Authority to require reports from departments of state government necessary to maintain record of accounts for every county, school district, municipality and other districts, see § 7-7-55.

Reports required by the legislative budget office, see §§ 27-103-107 et seq.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

§ 7-7-13. Repealed.

Repealed by Laws, 1984, ch. 488, § 124, eff from and after October 1, 1986 (see Editor's Note below).

§ 7-7-13. [Codes, 1942, § 3852-07; Laws, 1962, ch. 483, § 7]

Editor's Notes — Former § 7-7-13 provided for unified financial accounting and control among the departments and agencies of the state.

Laws of 1984, ch. 488, § 343, provided that the repeal of this section as proposed by section 124, was to become effective July 1, 1986. Subsequently, section 13, ch. 455, Laws of 1985, amended section 343, ch. 488, Laws of 1984, to provide that the repeal was not to become effective until October 1, 1986.

§ 7-7-15. State Fiscal Officer to receive all moneys for deposit in state treasury.

Every state department, division, officer, board, commission, institution or other agency owned or controlled by the state, collecting or receiving public funds or monies from any source whatever to be deposited in the State Treasury for the use of the state or any state agency, shall pay such monies to the State Fiscal Officer, who shall issue his warrant or certificate of receipt therefor, specifying the amount and the particular account on which such payment is to be made.

HISTORY: Codes, 1942, § 3852-08; Laws, 1962, ch. 483, § 8; Laws, 1984, ch. 488, § 97; Laws, 1989, ch. 532, § 8; Laws, 1994, ch. 391, § 1, eff from and after July 1, 1994.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

Repayment of loans made under water pollution abatement grant program to political subdivisions ineligible to pledge for repayment under §§ 49-17-65, 49-17-67, see § 49-17-69.

Water Pollution Control Revolving Fund, see § 49-17-87.

§ 7-7-17. State Fiscal Officer to receive reports of receipts of public funds not to be deposited into state treasury.

Reports shall be filed with the State Fiscal Officer at the time and in the manner prescribed by the State Fiscal Officer by all state departments, institutions and agencies of all receipts of public funds, as defined in Section 7-7-1, which are not required by law to be deposited into the State Treasury but into banks bonded to be depositories of such funds, so that the State Fiscal Officer may keep comprehensive records and may make complete periodic reports concerning all public funds belonging to or for the use of the state and those agencies owned or controlled by the state.

HISTORY: Codes, 1942, § 3852-09; Laws, 1962, ch. 483, § 9; Laws, 1984, ch. 488, § 98; Laws, 1989, ch. 532, § 9, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Authority to require reports from departments of state government necessary to maintain record of accounts for every county, school district, municipality and other districts, see § 7-7-55.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

§§ 7-7-19 and 7-7-21. Repealed.

Repealed by Laws, 1989, ch. 532, § 67, eff from and after July 1, 1989.

§ 7-7-19. [Codes, 1942, § 3852-10; Laws, 1962, ch. 483, § 10; Laws, 1984, ch. 488, § 99]

§ 7-7-21. [Codes, 1942, § 3852-11; Laws, 1962, ch. 483, § 11; Laws, 1984, ch. 488, § 100]

Editor's Notes — Former § 7-7-19 required the auditor of public accounts to audit, examine, and settle public debts and collectors of state tax revenue.

Former § 7-7-21 required the auditor of public accounts to keep records and accounts of all tax collectors.

§ 7-7-23. Purchase orders; receipt of executed copies; electronically submitted purchase orders.

(1) Purchases of equipment, supplies, materials or services of whatever kind or nature for any department, officer, institution or other agency of the state, the cost of which is to be paid from funds in the State Treasury on State Fiscal Officer disbursement warrants, may be made only by written purchase orders duly signed by the official authorized so to do, on forms prescribed by the State Fiscal Officer. Purchases of such equipment, supplies, materials, or services, as specified herein, made without the issuance of such purchase orders shall not be deemed to be obligations of the state unless the State Fiscal Officer, by general rule or special order, permits certain purchases to be made without same. As many copies of each purchase order shall be prepared as may be prescribed by the State Fiscal Officer, but at least one (1) copy shall be furnished the vendor, one (1) copy shall be furnished the State Fiscal Officer, and one (1) copy shall be retained by the department or agency for whose

benefit the purchase is made. The State Fiscal Officer, by general rule or special order, may allow for the submission of purchase orders in a format not requiring a signature. It shall be the duty of the proper official in each department or agency to forward the copy of each purchase order to the State Fiscal Officer on the same day the said order is issued. All purchase orders covering purchases to be paid for out of funds appropriated for any fiscal year shall be executed by June 30 of the fiscal year and shall be filed with and received for recording by the State Fiscal Officer within five (5) working days thereafter, and for electronically submitted purchase orders, the State Fiscal Officer shall issue regulations as to the last filing date required for purchase orders; otherwise, the same shall not be deemed to constitute valid obligations against the state within the meaning of Section 64 of the Constitution. The provisions of this subsection shall not apply to contracts for services of investigators employed by any agency of the state government authorized by law to employ such investigators.

(2) The State Fiscal Officer may approve electronically submitted purchase orders, thereby releasing such purchase orders and recording the encumbrances. For purposes of electronically submitted purchase orders, the State Fiscal Officer may exempt agencies from furnishing a copy of the purchase order to the State Fiscal Officer as required in subsection (1) above.

HISTORY: Codes, 1942, § 3852-12; Laws, 1962, ch. 483, § 12; Laws, 1970, ch. 468, § 1; Laws, 1984, ch. 488, § 101; Laws, 1989, ch. 532, § 10; Laws, 1994, ch. 391, § 2, eff from and after July 1, 1994.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Record of encumbrances of each purchase order filed under this section, see § 7-7-25.

Issuance of warrants for payment of claims, see § 7-7-35.

Powers and duties of Executive Director of the Department of Finance and Administration, see § 27-104-1 et seq.

§ 7-7-25. Record of encumbrances.

Upon receipt of each purchase order filed with the State Fiscal Officer under the provisions of Section 7-7-23, the State Fiscal Officer shall, upon approval of such purchase order, make due entry of the same on the record of encumbrances, which shall be established in the General Accounting Office, showing separately thereon an account for each department, institution or other agency and the law authorizing the appropriation from which the same is to be paid, if from appropriated funds. Encumbrances so made and entered shall, until paid, be shown in the General Accounting Office's books of account so as to be used as a liability against the then cash balance of the particular fund which is applicable, whether general or special, and against the appropriation balance, if the encumbrance is to be paid from appropriated funds.

HISTORY: Codes, 1942, § 3852-13; Laws, 1962, ch. 483, § 13; Laws, 1984, ch. 488, § 102; Laws, 1989, ch. 532, § 11, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

§ 7-7-27. Filing claims or invoices of purchases, services, etc.; waiver of certification that goods or services received under certain circumstances.

(1) Except as provided otherwise in subsection (2) of this section, all claims against the state as the result of purchases, services, salaries, travel expense, or other encumbrances made or liabilities incurred by any officer, department, division, board, commission, institution or other agency of the state authorized to incur such obligations, whether as the result of the issuance of purchase orders, as hereinabove provided, or not, shall be filed with, certified and approved by the agency incurring such obligation pursuant to rules and regulations established by the Department of Finance and Administration. These rules and regulations shall set forth certain circumstances where certification by the approving officers that the goods and services have been received or performed may be waived by the Department of Finance and Administration. Such waivers may pertain to, but should not be limited to, service contracts of limited time periods for lease of office space and equipment, computer software and subgrantee disbursements under federal grant programs.

(2) The Board of Trustees of State Institutions of Higher Learning and the local board of trustees of a community or junior college shall adopt rules and regulations for institutions under their governance for the waiver of certification that goods or services have been received or performed. These rules and regulations shall be consistent with those established by the Department of Finance and Administration under subsection (1) of this section.

HISTORY: Codes, 1942, § 3852-14; Laws, 1962, ch. 483, § 14; Laws, 1984, ch. 488, § 103; Laws, 1989, ch. 532, § 12; Laws, 1990, ch. 323, § 1; Laws, 1990, ch. 387, § 1; Laws, 1994, ch. 391, § 3; Laws, 2012, ch. 445, § 1; Laws, 2014, ch. 492, § 1, eff from and after passage (approved Apr. 15, 2014).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The subsection "(1)" designation was deleted from the beginning of the section (the section had a (1) but no (2)). The Joint Committee ratified the correction at its August 16, 2012, meeting.

Cross References — Exception from requirements of this section for payroll requisitions, see § 7-7-31.

Issuance of warrants for payment of claims, see § 7-7-35.

OPINIONS OF THE ATTORNEY GENERAL

Statute directs that certification of receipt of goods or services must be indicated before payment is made and therefore DFA could not contract with provider organizations to provide health care services for state employees at fixed fee per enrollee payable in advance. Ranck, Jan. 24, 1994, A.G. Op. #93-0921.

§ 7-7-29. Requisitions or requests for payment of invoices.

No requisitions or requests for payment drawn against any funds in the Treasury shall be issued by any state agency, official or other person except on forms to be prescribed by the State Fiscal Officer; and none may be presented by the agency, official or other person to any claimant, but all shall be forwarded to the State Fiscal Officer, together with the invoice or invoices covering same, as herein prescribed. The form of all requisitions shall be such as to prevent their being cashed by a bank or other institution, agency or person, it being the intention of the Legislature herein to prevent the payment of state funds to any claimant except upon state warrants regularly and legally issued by the State Fiscal Officer after he shall have submitted the claim to regular audit, examination and verification, as prescribed herein. Payments may be made to claimants on electronic funds transfers without a state warrant as provided under Section 7-9-14. The Department of Human Services and any other agencies meeting the requirements of Sections 7-9-41 and 7-9-43, wherein provision is made in certain cases for the withdrawal of funds from the Treasury in lump sums on State Fiscal Officer warrants, shall not be deemed to be in violation of the provisions of this section.

HISTORY: Codes, 1942, § 3852-15; Laws, 1962, ch. 483, § 15; Laws, 1984, ch. 488, § 104; Laws, 1989, ch. 532, § 13; Laws, 1994, ch. 391, § 4, eff from and after July 1, 1994.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Exception from requirements of this section for payroll requisitions, see § 7-7-31.

Issuance of warrants for payment of claims, see § 7-7-35.

§ 7-7-31. Payroll requisitions.

Notwithstanding the provisions of Sections 7-7-27 and 7-7-29, it shall not be necessary that a separate statement, invoice or requisition shall be issued for each person on payrolls for salaries and wages of state employees. Regular forms to be prescribed by the State Fiscal Officer shall be used, covering all employees but listing each name separately and giving all pertinent information such as gross salary, the various withholdings, and the net salary, together with such other information as the State Fiscal Officer may require.

HISTORY: Codes, 1942, § 3852-16; Laws, 1962, ch. 483, § 16; Laws, 1984, ch. 488, § 105; Laws, 1989, ch. 532, § 14, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

§ 7-7-33. Pre-audit of claims.

The State Fiscal Officer shall issue disbursement warrants upon satisfactory pre-audit as prescribed by standards and procedures established by the State Fiscal Officer in consultation with the State Auditor's office. Such standards and procedures shall include examination of the bill, invoice, account, payroll or other evidence of the claim, demand or charge and determination that the expenditure or disbursement is regular, legal and correct, and that the claim, demand or charge has not been previously paid. In order to ascertain that goods have been received or services rendered, the State Fiscal Officer may require such evidence as the circumstances may demand. If the expenditure or disbursement is proper, the State Fiscal Officer shall approve the same; otherwise, the State Fiscal Officer shall withhold approval. In order that such regularity and legality may appear, the State Fiscal Officer may return the claim to the department, institution or agency against which the same was issued for correction or amendment and may, by general rule or special order, require such certification or such evidence as the circumstances may demand.

HISTORY: Codes, 1942, § 3852-17; Laws, 1962, ch. 483, § 17; Laws, 1984, ch. 488, § 106; Laws, 1989, ch. 532, § 15, eff from and after July 1, 1989.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Authority to promulgate rules and regulations in regard to pre-audits, see § 7-7-41.

§ 7-7-35. Issuance of warrants for payment of claims; exception for electronic transfer of funds.

(1) After the allowance of any claim which is payable out of the State Treasury under any of the provisions of Sections 7-7-1 through 7-7-65, a warrant shall be issued for the sum to be paid, except as otherwise provided in Section 7-9-14. A register of all warrants so issued shall be kept by the State Fiscal Officer and a duplicate register shall be kept for the State Treasurer, which duplicate register shall be duly attested to by the State Fiscal Officer, or the employees he may designate for that purpose, and be filed daily with the said Treasurer, or at such periods during the day as may be necessary. All warrants on the Treasurer shall be signed by the State Fiscal Officer, as required elsewhere in these statutes, or by such employees as he may designate for that purpose. Such signature may be made by means of such mechanical or electrical device as the State Fiscal Officer may select, after the

same shall have been approved by the State Fiscal Officer. Such device shall be safely kept so that no one shall have access thereto except the State Fiscal Officer and such employees as may be authorized to sign warrants as herein provided. All such warrants shall be delivered by mail, or by messenger, or by personal service to the officer, department, institution or agency against which the claim involving the issuance of such warrant was made, and shall be delivered therefrom to the claimant.

(2) Periodically, such warrants of each department, institution or agency shall be mailed or handed directly to the claimant by someone other than the person preparing the requisition for payment in accordance with the control procedures established by the department, institution or agency. The State Fiscal Officer, at his discretion, may mail or deliver directly to the claimant the warrants for any department, institution or agency, or verify by some other means that delivery was made to the claimant.

HISTORY: Codes, 1942, § 3852-18; Laws, 1962, ch. 483, § 18; Laws, 1983, ch. 355, § 2; Laws, 1984, ch. 488, § 107; Laws, 1989, ch. 532, § 16; Laws, 1994, ch. 391, § 5, eff from and after July 1, 1994.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross References — Authority to promulgate rules and regulations in regard to issuance of warrants, see § 7-7-41.

Seal of state to be on every disbursement warrant, see § 7-7-61.

Time for filing requisition for payment of invoice; time for mailing warrant in payment of invoice, see § 31-7-303.

Notification of public body of date on which warrant mailed to claimant, as payment for goods or services provided to such public body, see § 31-7-305.

Warrants for junior college vocational and technical training fund, see § 37-29-165.

§ 7-7-37. Warrants; to whom payable.

The State Fiscal Officer shall write warrants payable to the order of the person, firm, institution or agency entitled thereto for all monies which, by law, are directed to be paid out of the Treasury.

HISTORY: Codes, 1942, § 3852-19; Laws, 1962, ch. 483, § 19; Laws, 1984, ch. 488, § 108; Laws, 1989, ch. 532, § 17, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Authority to promulgate rules and regulations in regard to issuance of warrants, see § 7-7-41.

Procedures for Executive Director of Finance and Administration to follow under homestead exemption law, see § 27-33-45.

Crime of forgery of warrant of Executive Director of Finance and Administration, see § 97-21-61.

§ 7-7-39. Warrants to be drawn within appropriation or budget.

The State Fiscal Officer shall not draw warrants without, or in excess of, appropriations of money for the purpose, except in those cases specifically provided for by law; nor shall the State Fiscal Officer draw warrants against budgeted funds until notified by certification that the budget for the current allotment period of the fiscal year for the department, institution, or agency concerned is in compliance with the appropriation, and the amount of the approved budget has been set up in the State Fiscal Officer's records; nor shall the State Fiscal Officer draw warrants in excess of the amount so budgeted and approved, nor shall the State Fiscal Officer draw any warrant in excess of the cash balance then available in the particular fund against which the warrant is chargeable unless the warrant is to be drawn against federal programs in which federal funds are receipted based upon policies and procedures as established by the State Fiscal Officer or in other situations as deemed necessary by the State Fiscal Officer.

HISTORY: Codes, 1942, § 3852-20; Laws, 1962, ch. 483, § 20; Laws, 1970, ch. 517, § 1; Laws, 1984, ch. 488, § 109; Laws, 1989, ch. 532, § 18; Laws, 1992, ch. 359, § 1; Laws, 2012, ch. 397, § 1, eff from and after July 1, 2012.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Authority to promulgate rules and regulations in regard to issuance of warrants, see § 7-7-41.

Payment of claims from prior fiscal year, see § 27-104-25.

§ 7-7-40. Authority of State Fiscal Officer to approve escalations in budgets.

The State Fiscal Officer shall have the authority to approve escalations in a budget using special funds pursuant to specific authorization stated in an appropriation bill. Upon written documentation submitted by an agency head, the State Fiscal Officer shall also have the authority to approve escalations to a budget using donated or endowment funds designated for a specific purpose and using insurance proceeds as a result of damage to state property. Such escalations may not exceed the amount of such donated or endowment funds or insurance proceeds.

HISTORY: Laws, 1989, ch. 532, § 66; Laws, 2000, ch. 393, § 1, eff from and after July 1, 2000.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-41. Rules and regulations.

The State Fiscal Officer may promulgate such regulations and procedures as he may deem necessary in regard to preauditing and postauditing claims and issuing warrants covering payments for construction contracts entered into by the Mississippi Department of Transportation, the Department of Finance and Administration, the State Department of Education, or by any other agency now existing or hereafter created, having control and supervision of the awarding and payment of construction contracts.

The State Fiscal Officer shall prescribe rules and regulations concerning the preauditing and postauditing of claims and the issuance of warrants and other forms of payments for all departments, institutions and agencies of the state, more particularly those coming within the provisions of Sections 7-9-41 and 7-9-43, after full discussion with the fiscal officers thereof, to the end that the most efficient overall state accounting system may be maintained. Such regulations, however, shall be of such nature and application that the State Fiscal Officer shall be able to maintain adequate records in his books of accounts of all fiscal operations of the state, and in no event shall the regular audit of the transactions of such departments, institutions and agencies by the State Department of Audit be suspended.

HISTORY: Codes, 1942, § 3852-21; Laws, 1962, ch. 483, § 21; Laws, 1984, ch. 488, § 110; Laws, 1989, ch. 532, § 19; Laws, 2000, ch. 477, § 1, eff from and after July 1, 2000.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Additional authority for Executive Director of Finance and Administration to prescribe regulations, see § 7-7-47.

§ 7-7-42. Limitation of time for payment of warrants.

Any State of Mississippi warrant issued by the State Fiscal Officer against any fund in the State Treasury which has not been presented to the State Treasurer for payment within one (1) year after the last day of the month in which it was originally issued, shall be null and void, the obligation thereafter shall be unenforceable and the State Fiscal Officer shall not issue an additional warrant.

The State Fiscal Officer is authorized and directed to cancel all outstanding warrants over one (1) year old at the end of each month and shall notify the State Treasurer who shall remove such warrants from his list of outstanding warrants.

The State Fiscal Officer shall transfer the funds reflected by the cancellation of the warrant to the Abandoned Property Fund authorized by Section 89-12-37 of the Unclaimed Property Division of the State Treasury where the funds shall remain for five (5) years. After five (5) years, if the funds are unclaimed, the State Treasurer shall transfer the funds back to the original source of funds.

This section is applicable to warrants issued on and after January 1, 2000.

HISTORY: Laws, 1974, ch. 409; Laws, 1984, ch. 488, § 111; Laws, 1989, ch. 532, § 20; Laws, 2000, ch. 501, § 1, eff from and after passage (approved Apr. 27, 2000).

Editor's Notes — Laws, 1984, ch. 488, § 341, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Issuance of duplicate warrant where original warrant lost or destroyed, see § 7-7-57.

§ 7-7-43. Warrants not to be issued to state's debtors; notice for state tax claim; liability for disregard of notice.

(1) The State Fiscal Officer, any chancery or city clerk, or the fiscal officer of any county or separate school district, institution of higher learning, state college, university or state community college, shall not issue any warrant upon any allowance made to, or claim in favor of, any person, his agent, or assignee who shall be indebted to the state, or against whom there shall be any balance appearing in favor of the state; but such officer shall allow such debtor a credit on his account for such allowance or claim.

(2) For state tax claims, the Tax Commissioner is required to furnish the appropriate fiscal officer with notice that state taxes have not been paid. This notice shall serve as a stop order upon any allowance made to, or claim in favor of, any person, his agent, or assignee who shall be indebted to the state, or any political subdivision thereof, or against whom there shall be any balance appearing in favor of the state or any political subdivision thereof. Disregard of the stop order notice shall create a personal liability against such fiscal officer for the full amount of state taxes due, plus interest and penalty.

HISTORY: Codes, 1942, § 3852-22; Laws, 1962, ch. 483, § 22; Laws, 1984, ch. 488, § 112; Laws, 1989, ch. 532, § 21; Laws, 1993, ch. 563, § 1, eff from and after July 1, 1993.

Editor's Notes — Laws, 1984, ch. 488, § 341, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Authority to issue rules and regulations to implement this section, see § 7-7-41.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Set-offs.

1. In general.

Where the application and bonds executed on state projects, dated January 21, 1948, and May 8, 1948, respectively, contained an assignment to the surety of all sums due or to become due to the contractor, which assignments became effective on the above dates, the right of the surety to retainage funds on the projects in the hands of the State Building Commission at the time of the contractor's default became effective prior to the accrual and assessment of income taxes against the contractor for the year 1948, and this statute was inapplicable. Horne v. State Bldg. Com., 233 Miss. 810, 103 So. 2d 373, 1958 Miss. LEXIS 444 (Miss. 1958), overruled, Pruett v. City of Rosedale, 421 So. 2d 1046, 1982 Miss. LEXIS 2273 (Miss. 1982).

2. Set-offs.

Because under Miss. Code Ann. §§ 75-9-203, 75-9-322, the first perfected security interest had priority, plaintiff, a receiver for the receivership entities, on behalf of the entities' creditor who filed first, had priority over a state tax lien such that defendant state taxing authority's distress warrants issued against the entities' accounts receivable were quashed, and, because Miss. Code Ann. § 7-7-43 dealt with tax liabilities, not contractual debts owed by the state, the state had no right to a setoff. Nabers v. Morgan, 2011 U.S. Dist. LEXIS 10504 (S.D. Miss. Feb. 2, 2011).

OPINIONS OF THE ATTORNEY GENERAL

Phrase "claim in favor of" includes salary due and payable to teacher under contract to school district. Price Dec. 16, 1993, A.G. Op. #93-0878.

The Mississippi Bureau of Narcotics is not empowered to withhold money otherwise due a former employee who has left state employment without returning state property issued to him or reimbursing the state for its value or who has taken state property with him; however, if property belonging to the Bureau of Narcotics is missing and cannot be immediately retrieved, the bureau should promptly report these facts to the State Auditor and the State Fiscal Officer, and may accompany the report with a request that the State Fiscal Officer withhold the sums due the state from any amounts that would otherwise be payable to the responsible party or parties. Jones, Nov. 5, 1999, A.G. Op. #99-0602.

The use of the phrase "against whom there shall be any balance appearing in favor of the state" in subsection (1) does not require that a sum due the state be reduced to judgment before action can be taken. Jones, Nov. 5, 1999, A.G. Op. #99-0602.

§ 7-7-45. Financial reports.

The State Fiscal Officer shall be required to make the following reports:

(a) The State Fiscal Officer shall, within sixty (60) days after the adjournment of the Legislature, prepare and furnish to the State Auditor a full statement of all moneys expended at such session, specifying the items and amount of each item, and to whom and for what paid, in order that the Auditor may publish the amounts of all appropriations, all as prescribed by Section 113 of the Constitution. Sufficient copies of the report shall be made available to members of the Legislature, state officials, departments, institutions and agencies of the state government, as may be requested by such individual or department; and such others are to be made available for distribution as the State Fiscal Officer or Governor may determine.

(b) The State Fiscal Officer shall, within fifteen (15) days after the commencement of every regular session of the Legislature, make to it a special report on the fiscal affairs of the state as of January 1 of the then current year.

(c) The State Fiscal Officer shall prepare the comprehensive annual financial report as provided for in Section 27-104-4.

(d) In addition to the other reports herein required, it shall be the duty of the State Fiscal Officer to have available in the State Fiscal Officer's office, for the use of the Governor, the Legislature, the Legislative Budget Office and any other persons, daily reports of each fund account which the State Fiscal Officer is required to maintain, showing thereon balances brought forward, receipts to date, net expenditures to date, the unexpended balances, the amount of unpaid purchase orders, and the unencumbered balances. In addition thereto, the State Fiscal Officer shall be required to have available in its office reports of appropriation accounts, showing thereon the amount appropriated for each purpose, the amount of warrants issued to date, the unexpended appropriation balance, the amount of unpaid purchase orders, and the unencumbered appropriation balance for each such account.

Nothing herein shall be construed as preventing the State Fiscal Officer from making such other financial reports, and at such other time as it may deem advisable or for the best interests of the state; nor shall this section be construed as authority for discontinuing any other reports required by law. The cost of printing such reports of the State Fiscal Officer, as required herein, shall be paid from the appropriation made for that purpose.

HISTORY: Codes, 1942, § 3852-23; Laws, 1962, ch. 483, § 23; Laws, 1970, ch. 518, § 1; Laws, 1984, ch. 488, § 113; Laws, 1986, ch. 499, § 3; Laws, 1989, ch. 532, § 22, eff from and after July 1, 1989.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

Annual audit of the Public Service Commission Regulation Fund, see § 77-1-6.

§ 7-7-47. Regulations and forms.

The State Fiscal Officer shall prescribe all regulations and shall prescribe uniform forms that he deems necessary for the performance of the duties required by Sections 7-7-1 through 7-7-65.

HISTORY: Codes, 1942, § 3852-24; Laws, 1962, ch. 483, § 24; Laws, 1984, ch. 488, § 114; Laws, 1989, ch. 532, § 23, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Additional authority for Executive Director of Finance and Administration to promulgate rules, regulations and procedures, see § 7-7-41.

§ 7-7-49. Purpose and intent of Sections 7-7-1 through 7-7-65.

The purpose and intent of Sections 7-7-1 through 7-7-65 is hereby declared to be the establishment and maintenance of a modernized and efficient General Accounting Office for the State of Mississippi so that there may be available at all times therein all pertinent information of a fiscal nature concerning the operation of the state government. While the State Fiscal Officer is hereby charged with the primary responsibility of establishing and maintaining such office and making available the information contemplated herein, he is to work in conjunction with other state agencies, not injuring the normal functions thereof, in arriving at the desired end. Full cooperation and cohesive effort is hereby declared to be essential by and between the State Fiscal Officer, the State Treasurer, the Legislative Budget Office, the State Department of Audit, the State Tax Commission, and all other state departments, institutions and agencies, in order that the full purpose and intent of the cited sections may be effected.

HISTORY: Codes, 1942, § 3852-25; Laws, 1962, ch. 483, § 25; Laws, 1984, ch. 488, § 115; Laws, 1989, ch. 532, § 24, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Joint legislative budget committee and legislative budget office, generally, see §§ 27-103-101 et seq.

§ 7-7-51. Procurement and installation of necessary machines and equipment.

The State Fiscal Officer is hereby given the authority, and it shall be his duty, to procure on competitive bids and install or have installed all machines, equipment, records and other things necessary for the performance of the duties imposed upon the State Fiscal Officer by Sections 7-7-1 through 7-7-65. Such machines and equipment as are to be purchased shall be purchased in full compliance with the laws of the state pertaining thereto and, if in the discretion of the State Fiscal Officer, it is to the best interests of the state, he may rent certain machines and equipment.

HISTORY: Codes, 1942, § 3852-26; Laws, 1962, ch. 483, § 26; Laws, 1984, ch. 488, § 116; Laws, 1989, ch. 532, § 25, eff from and after July 1, 1989.

Editor's Notes — Laws, 1984, ch. 488, § 341, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

§ 7-7-53. Bureau of Capitol Facilities to provide office space.

It shall be the duty of the Bureau of Capitol Facilities, acting under the authority given by Section 29-5-3, to provide sufficient office space for the office of the State Fiscal Officer, including the amount required for filing and storage, although the space for the filing and storage of invoices, statements, bills, and other papers and documents of such nature, held for more than two (2) years after the date of issuance, may not be required to be furnished.

HISTORY: Codes, 1942, § 3852-27; Laws, 1962, ch. 483, § 27; Laws, 1989, ch. 532, § 26, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

§ 7-7-55. Accounts to be kept with counties, districts, and municipalities.

The State Fiscal Officer shall maintain accounts to show the name of every county, school district, municipality and every other district of any kind or character receiving funds from the state, in such manner that there may be ascertained therefrom the amounts of state funds appropriated or otherwise contributed thereto. Where reports are necessary from other departments of state government in order for the State Fiscal Officer to do this, the State Fiscal Officer may require such departments to make such reports in the manner and at the times he may prescribe.

HISTORY: Codes, 1942, § 3852-28; Laws, 1962, ch. 483, § 28; Laws, 1984, ch. 488, § 117; Laws, 1989, ch. 532, § 27, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Powers and duties of Executive Director of Finance and Administration, see §§ 27-104-1 et seq.

§ 7-7-57. Issuance of duplicate warrants.

Upon satisfactory proof being presented to the State Fiscal Officer that any warrant drawn by the State Fiscal Officer upon the State Treasury has been lost or destroyed before having been paid, the State Fiscal Officer may issue a duplicate therefor upon a bond being executed by the State Fiscal Officer with such security as is approved by him, payable to the state in the penalty of double the amount of the warrant, and conditioned to save harmless the state from any loss occasioned by the issuing of the duplicate warrant, together with an affidavit relating the circumstances under which said warrant was lost or destroyed.

HISTORY: Codes, 1942, § 3852-29; Laws, 1962, ch. 483, § 29; Laws, 1966, ch. 556, § 1; Laws, 1984, ch. 488, § 118; Laws, 1989, ch. 532, § 28, eff from and after July 1, 1989.

Editor's Notes — Laws, 1984, ch. 488, § 341, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Time limitations for presentment of warrants for payment, see § 7-7-42.

Authorized duplication of mutilated state, county, town, or levy board warrants, see § 25-55-19.

Inapplicability of bond requirements of this section to warrants for refund of income tax, see § 27-7-313.

§ 7-7-59. Petty cash funds.

A reasonable petty cash fund shall be allowed each state department, institution, board, commission or other agency if, in the judgment of the State Fiscal Officer, such is necessary for the proper operation of the fiscal affairs thereof. The amount of such petty cash fund shall be fixed by the State Fiscal Officer in each case, but these funds shall be reimbursed only upon vouchers audited by the State Fiscal Officer. It shall not be lawful for any petty cash fund to be used for cashing checks or otherwise advancing funds to any officer or employee of any state department or agency.

The State Fiscal Officer may by regulation provide for the establishment of commercial bank accounts by any state agency, which shall serve as the depository for self-generated funds and custodial funds not required by law to be deposited in the State Treasury. The regulations may provide for such accounts to be used for disbursements not required to be made by warrants on the State Treasury. Each such account established shall have a maximum balance to be fixed by the State Fiscal Officer. All such accounts shall bear interest. For self-generated funds, the interest shall be deposited in the

General Fund and for custodial funds, the interest shall be deposited in the custodial bank account. The State Auditor shall test for compliance with this section in any postaudit, and may, after notice and hearing, levy a civil penalty not to exceed One Thousand Dollars ($1,000.00) for any violation hereof. The auditor shall annually report all violations of this section to the Governor and the Legislature.

HISTORY: Codes, 1942, § 3852-30; Laws, 1962, ch. 483, § 30; Laws, 1984, ch. 488, § 119; Laws, 1985, ch. 455, § 13; Laws, 1985, ch. 525, § 8; Laws, 1989, ch. 532, § 29, eff from and after July 1, 1989.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

OPINIONS OF THE ATTORNEY GENERAL

Under Section 7-7-59, agents of the Mississippi Bureau of Narcotics may use money from the Bureau's Special Operations Fund to purchase, in advance, food and necessary housekeeping supplies to feed and maintain agents participating in Court ordered, around the clock, interception of wire or oral communication operations, provided that the agents are not reimbursed for expenses. Jones, May 17, 1996, A.G. Op. #96-0351.

A petty cash fund may be established from moneys in the Department of Audit special fund, and the costs of purchasing information and/or evidence may be paid out of the petty cash fund, provided the petty cash fund has been approved for those purposes by the Department of Finance and Administration in accordance with the guidelines and requirements of the statute. Bryant, Mar. 30, 2001, A.G. Op. #01-0168.

§ 7-7-60. Petty cash funds for offices within county, municipality, or board of education.

A petty cash fund for offices within the county, municipality or board of education may be established in accordance with regulations set forth by the State Auditor's office.

HISTORY: Laws, 1985, ch. 425, § 11, eff from and after passage (approved March 26, 1985).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-61. Seal of the office.

The seal used by the State Fiscal Officer shall be the seal prescribed by Section 126 of the Mississippi Constitution. The seal is to be impressed, or printed, upon the face of every disbursement warrant issued by the State Fiscal Officer.

HISTORY: Codes, 1942, § 3852-31; Laws, 1962, ch. 483, § 31; Laws, 1984, ch. 488, § 120; Laws, 1989, ch. 532, § 30, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

§ 7-7-63. Preservation of books and records.

The State Fiscal Officer shall carefully keep and preserve the books, records, papers and other things belonging to the General Accounting Office. Invoices, statements, bills and other papers of such nature may be disposed of in accordance with approved records control schedules. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History.

HISTORY: Codes, 1942, § 3852-32; Laws, 1962, ch. 483, § 32; Laws, 1981, ch. 501, § 17; Laws, 1984, ch. 488, § 121; Laws, 1989, ch. 532, § 31, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

Archives and Records Management Law, generally, see § 25-59-1 et seq.

Department of Archives and History, see § 39-5-1 et seq.

Crime of making false entries or alterations of entries in books of public office, see § 97-21-1.

§ 7-7-65. Books open for inspection.

The State Fiscal Officer shall submit the accounts and records of the General Accounting Office to the inspection of any member of the Legislature or the Governor when required.

HISTORY: Codes, 1942, § 3852-33; Laws, 1962, ch. 483, § 33; Laws, 1984, ch. 488, § 122; ch. 532, § 32, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

§ 7-7-67. Investigation of fiscal officers and depositories.

It shall be the duty of the state auditor to investigate the books, accounts, and vouchers of all fiscal officers and depositories of the state and of every county, levee board, and taxing district of every kind, and to sue for, collect, and pay over all money improperly withheld by such fiscal officer or depository. He has the power to sue and right of action against all such officers and depositories and their sureties to collect any such moneys; but if the delinquency appears by a correct open account on the books of the proper accounting officer or depository, the right of the state auditor to sue shall arise only after he has given thirty (30) days' notice to the delinquent officer or depository to pay over the amounts and he fails to do so. If he shall examine the books, accounts, and vouchers of any fiscal officer or depository of the state, county, levee board, or taxing district of any kind and find them correct, he shall give a certificate to that effect to such officer and to the board of supervisors of the proper county, or to the proper levee board, or other taxing district.

The state auditor may, in his discretion, also investigate the books, accounts, and vouchers of any municipality, even though such investigation and inspection has been made by a certified public accountant or an accounting firm; and the state auditor shall have the same authority and powers regarding such municipal inspections as granted herein regarding any other investigation.

HISTORY: Codes, 1942, § 3867-01; Laws, 1970, ch. 542, § 1, eff from and after passage (approved April 6, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

JUDICIAL DECISIONS

1. Right to bring suit.

Miss. Code Ann. §§ 7-7-67 or 7-7-71 do not bestow exclusive authority to the Mississippi State Auditor alone to bring suits against the Mississippi State Tax Commission challenging the diversion of state sales tax funds to municipalities. City of Belmont v. Miss. State Tax Comm'n, 860 So. 2d 289, 2003 Miss. LEXIS 132 (Miss. 2003).

§ 7-7-69. Examination of records of various boards.

It shall be the further duty of the state auditor and he shall have the authority to examine the records, minutes, and allowances of the various boards of supervisors, drainage boards, and all other boards empowered to make allowances of public money under the laws of the state. He shall give notice to such boards of any errors in accounting, of funds credited to any erroneous account, and of funds in public treasuries to an erroneous account;

and unless such board shall within thirty (30) days correct such errors or omissions, the members thereof shall be guilty of misfeasance of office and punished accordingly. Should the state auditor discover that any of the boards mentioned in the preceding parts of this section have appropriated any money to the purpose not authorized by law, he shall have authority to bring suit for the amount of such illegal allowance or allowances against the members of such board voting for such illegal allowance on their official bond and against the party receiving such allowance. In the event of recovery, he shall be entitled to recover the amount due, which shall be paid into the fund to which it is due; and he may assess a penalty thereon not to exceed twenty percent (20%), which shall be paid into the general fund in the state treasury.

HISTORY: Codes, 1942, § 3867-02; Laws, 1970, ch. 542, § 2, eff from and after passage (approved April 6, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Audit of funds collected by the agricultural aviation board, see § 69-21-119.

§ 7-7-71. Examination of records of public officers.

The state auditor, in the discharge of the official duties imposed upon him by Sections 7-7-67 through 7-7-79, shall have full power and authority to examine and investigate the books, records, papers, accounts, and vouchers of any state, county, municipal, or other officer.

HISTORY: Codes, 1942, § 3867-03; Laws, 1970, ch. 542, § 3, eff from and after passage (approved April 6, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

JUDICIAL DECISIONS

1. Right to bring suit.

Miss. Code Ann. §§ 7-7-67 or 7-7-71 do not bestow exclusive authority to the Mississippi State Auditor alone to bring suits against the Mississippi State Tax Commission challenging the diversion of state sales tax funds to municipalities. City of Belmont v. Miss. State Tax Comm'n, 860 So. 2d 289, 2003 Miss. LEXIS 132 (Miss. 2003).

§ 7-7-73. Embezzlement by public officer or employee.

When the state auditor shall have reason to believe that a public officer or employee has embezzled any public funds, he shall notify the governor and the proper district attorney, and shall attend the trial as a witness for the state, if necessary.

HISTORY: Codes, 1942, § 3867-04; Laws, 1970, ch. 542, § 4, eff from and after passage (approved April 6, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-75. Suits by state auditor.

All suits by the state auditor under the provisions of Sections 7-7-67 through 7-7-79 shall be in his own name for the use of the state, county, municipality, levee board, or other taxing district interested; and he shall not be liable for costs, and may appeal without bond. Such suits may be tried at the return term and shall take precedence over other suits.

HISTORY: Codes, 1942, § 3867-05; Laws, 1970, ch. 542, § 5, eff from and after passage (approved April 6, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-77. Settlement and accounting for moneys collected.

The state auditor shall settle with the proper officers and pay over all moneys collected by him under the provisions of Sections 7-7-67 through 7-7-79 as required by law. He shall make a report to the state treasurer at the end of the fiscal year, giving a full account of all said collections by him during the preceding fiscal year, and of whom and on whose account collected. For a failure to render such account and settle and pay over all such collections made by him as required by law, the state auditor shall be suspended from office by the governor in the same manner as in the case of a defaulting state treasurer.

HISTORY: Codes, 1942, § 3867-06; Laws, 1970, ch. 542, § 6, eff from and after passage (approved April 6, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-79. Reports of operation.

The state auditor shall make a detailed account of the operation of Sections 7-7-67 through 7-7-79 to the governor once each year, and to the legislature at each regular session.

HISTORY: Codes, 1942, § 3867-07; Laws, 1970, ch. 542, § 7, eff from and after passage (approved April 6, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-81. Audits of entities and their use of monies from certain federal funds; Auditor's Enhanced Accountability Fund created.

(1) The State Auditor shall have the authority to preaudit or postaudit, conduct performance audits and reviews, investigate projects, entities and their use of any funds provided to the state or any of its agencies or subdivision, or any nonprofit organization, from the federal American Recovery and Reinvestment Act of 2009, the federal RESTORE Act, the Gulf Environmental Benefit Fund, and fees derived from the Natural Resource Damage Assessment pursuant to the 2010 Deepwater Horizon explosion and oil spill, and their successors. If sufficient resources are available, the State Auditor shall maintain an official Web site and provide public access to copies of audit reports of state and local government entities receiving funds from the American Recovery and Reinvestment Act, the federal RESTORE Act, the Gulf Environmental Benefit Fund, and fees derived from the Natural Resource Damage Assessment pursuant to the 2010 Deepwater Horizon explosion and oil spill, and their successors. The State Auditor shall have the authority to recover costs associated with auditing and investigating such projects and funds within the limits of federal law from any such entity that receives such funds. In addition, the State Auditor shall have the authority to contract with qualified certified public accounting firms to perform selected engagements under this section, if funds are made available for such contracts by the Legislature, the governmental entities covered by this section or by the federal government. All files, working papers, notes, correspondence and any other

data compiled by the audit firms in connection with the engagements shall be available upon request, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day.

(2) A special fund, to be designated as the "Auditor's Enhanced Accountability Fund," shall be created within the State Treasury. The fund shall be maintained by the State Treasurer as a separate and special fund, separate and apart from the General Fund of the state. Within the limits of federal law, initial funds shall be deposited from each governing entity receiving monies from the American Recovery and Reinvestment Act, the federal RESTORE Act, the Gulf Environmental Benefit Fund, and fees derived from the Natural Resource Damage Assessment pursuant to the 2010 Deepwater Horizon explosion and oil spill, based on a sliding scale to be determined by the State Auditor. Subsequent and additional funds may be deposited from any source made available to the Department of Audit for such purposes. Unexpended monies from the American Recovery and Reinvestment Act, the federal RESTORE Act, the Gulf Environmental Benefit Fund, and fees derived from the Natural Resource Damage Assessment pursuant to the 2010 Deepwater Horizon explosion and oil spill, remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be deposited into such fund, but shall be held to pay for postaudit and investigative costs for related expenditures and programs. Monies deposited into the fund shall be disbursed, in the discretion of the State Auditor, to pay the allowable costs of additional preaudit, postaudit, investigative, or other allowable or accountability requirements not funded through regular appropriations or special fund billing provided in this section. Monies in the special fund may be used to reimburse reasonable actual and necessary costs incurred by the State Auditor to accomplish objectives under this section. The State Auditor shall maintain a specific accounting of actual costs incurred for each project for which reimbursements are sought and shall provide a report to the Legislature within sixty (60) days from the end of each fiscal year regarding the nature and amounts of all expenditures. The Department of Audit may escalate its budget and expend such funds in accordance with rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

HISTORY: Laws, 2009, ch. 546, § 22; Laws, 2014, ch. 489, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "Natural Resource Damage Assessment" for "Natural Resources Damages Assessment" in the first and second sentences of (1) and the third and fifth sentences of (2). The Joint Committee ratified the correction at its July 24, 2014, meeting.

Federal Aspects— American Recovery and Reinvestment Act, see Public Law 111-5, 123 Stat. 115.

ARTICLE 3.

DEPARTMENT OF AUDIT.

Sec.
7-7-201. Department of audit created.
7-7-202. Offices of department; office hours; official seal.
7-7-203. State Auditor to appoint director for financial and compliance division, director for investigations division and other employees as necessary to carry out duties of auditor.
7-7-204. Paid internship program for certain students working toward a bachelor's or master's degree in accounting; eligibility requirements; liability of recipients who fail to complete coursework or degree or fail to work as auditor at Office of State Auditor for requisite period of time.
7-7-205. Surety bonds required.
7-7-207. Compensation of director.
7-7-209. Travel and other expenses.
7-7-211. Powers and duties of department.
7-7-213. Payment of costs of audits and other services.
7-7-214. Payment of costs of audits by governmental entities which receive reimbursement from federal government; disposition of amounts collected.
7-7-215. Reports; applicability of generally accepted auditing standards; retention of audit materials; access to records of entities subject to audit.
7-7-216. Independent audit of office of State Auditor.
7-7-217. Record of exceptions taken as result of audits.
7-7-218. Preparation of report by State Auditor where public officer or employee fails or refuses to make report; correction and publication of finding of substantial noncompliance where public officer or employee fails to correct finding; payment of expenses.
7-7-219. Report of exceptions to legislative committee.
7-7-221. Publication of synopsis of county audit report.
7-7-223. Repealed.
7-7-225. Contract for legal services.

§ 7-7-201. Department of audit created.

A department of audit is hereby established under the supervision of the State Auditor. He shall exercise such powers and perform such duties incident to the organization and function of the department as are set forth in the subsequent sections of this article.

HISTORY: Codes, 1942, § 3877-01; Laws, 1948, ch. 202, § 1; Laws, 1952, ch. 176, § 1; Laws, 1986, ch. 488, § 1, eff from and after passage (approved April 15, 1986).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Duties of the State Department of Audit with respect to professional education programs for county purchase, receiving, and inventory control clerks, and county boards of supervisors, see § 19-3-77.

Requirement of annual audits of every municipality, see § 21-35-31.

Additional examiners doing audit of school reports, see §§ 37-37-3 et seq.

Annual audit of department of banking and consumer finance, see § 81-1-71.

§ 7-7-202. Offices of department; office hours; official seal.

The State Auditor shall keep the office of the department at the seat of the government and shall keep it open Monday through Friday of each week for at least eight (8) hours each day. The State Auditor may establish satellite offices at other locations in the state. The State Auditor is authorized to prepare and use an official seal.

HISTORY: Laws, 1986, ch. 488, § 2, eff from and after passage (approved April 15, 1986).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-203. State Auditor to appoint director for financial and compliance division, director for investigations division and other employees as necessary to carry out duties of auditor.

The State Auditor shall appoint a director for the financial and compliance division and a director for the investigations division of the department. The director of the financial and compliance division shall be a certified public accountant of recognized executive ability and thoroughly familiar with the laws of the state in relation to the financial administration of the public offices thereof. The director of the investigations division shall be a certified law enforcement officer of recognized executive ability and shall be thoroughly familiar with the laws of the state in relation to the financial administration of the public offices thereof.

The State Auditor may appoint deputy auditors; employ attorneys, certified public accountants and other assistants; or contract for any services necessary to carry out the provisions of this article.

HISTORY: Codes, 1942, § 3877-02; Laws, 1948, ch. 202, § 2; Laws, 1952, ch. 176, § 2; Laws, 2013, ch. 545, § 1, eff from and after July 1, 2013.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal

Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Forms for municipal budget of expenses and revenue, see § 21-35-7.

Annual audit of municipalities' books upon a uniform formula, see § 21-35-31.

§ 7-7-204. Paid internship program for certain students working toward a bachelor's or master's degree in accounting; eligibility requirements; liability of recipients who fail to complete coursework or degree or fail to work as auditor at Office of State Auditor for requisite period of time.

(1) Within the limits of the funds available to the Office of the State Auditor for such purpose, the State Auditor may grant a paid internship to students pursuing junior or senior undergraduate-level year coursework toward a bachelor's degree in accounting or graduate-level coursework toward a master's degree in accounting. Those applicants deemed qualified shall receive funds that may be used to pay for tuition, books and related fees to pursue their degree. It is the intent of the Legislature that the paid internship program (hereinafter referred to as the program) shall be used as an incentive for accounting students to develop job-related skills and to encourage accounting careers at the Office of the State Auditor.

(2) In order to be eligible for the program, an applicant must:

(a) Attend any college or school approved and designated by the Office of the State Auditor.

(b) Satisfy the following conditions:

(i) Undergraduate stipulations: Applicants must have successfully obtained a minimum of fifty-eight (58) semester hours toward a bachelor of science degree in accounting from a Mississippi institution of higher learning.

Applicants must have achieved a minimum Grade Point Average (GPA) on the previously obtained semester hours toward a bachelor of science degree in accounting of 3.0 on a 4.0 scale.

If accepted into the program, participants shall maintain a minimum cumulative GPA of 3.0 on a 4.0 scale in all coursework counted toward a bachelor of science degree in accounting.

(ii) Graduate stipulations: Applicants must have met the regular admission standards and have been accepted into the master of science accounting program at a Mississippi institution of higher learning.

If accepted into the program, participants shall maintain a minimum cumulative GPA of 3.0 on a 4.0 scale in all coursework counted toward a master of science degree in accounting.

(c) All program participants will be required to work a total of three hundred thirty-six (336) hours each summer at the Office of the State Auditor in Jackson, Mississippi.

(d) Agree to work as an auditor at the Office of the State Auditor upon graduation for a period of time equivalent to the period of time for which the applicant receives compensation, calculated to the nearest whole month, but in no event less than two (2) years.

(3)(a) Before being placed into the program, each applicant shall enter into a contract with the Office of the State Auditor, which shall be deemed a contract with the State of Mississippi, agreeing to the terms and conditions upon which the internship shall be granted to him. The contract shall include such terms and provisions necessary to carry out the full purpose and intent of this section. The form of such contract shall be prepared and approved by the Attorney General of this state, and shall be signed by the State Auditor of the Office of the State Auditor and the participant.

(b) Upon entry into the program, participants will become employees of the Office of the State Auditor during their time in the program and shall be eligible for benefits such as medical insurance paid by the agency for the participant; however, in accordance with Section 25-11-105II(b), those participants shall not become members of the Public Employees' Retirement System while participating in the program. Participants shall not accrue personal or major medical leave while they are in the program.

(c) The Office of the State Auditor shall have the authority to cancel any contract made between it and any program participant upon such cause being deemed sufficient by the State Auditor.

(d) The Office of the State Auditor is vested with full and complete authority and power to sue in its own name any participant for any damages due the state on any such uncompleted contract, which suit shall be filed and handled by the Attorney General of the state. The Office of the State Auditor may contract with a collection agency or banking institution, subject to approval by the Attorney General, for collection of any damages due the state from any participant. The State of Mississippi, the Office of the State Auditor and its employees are immune from any suit brought in law or equity for actions taken by the collection agency or banking institution incidental to or arising from their performance under the contract. The Office of the State Auditor, collection agency and banking institution may negotiate for the payment of a sum that is less than full payment in order to satisfy any damages the participant owes the state, subject to approval by the director of the sponsoring facility within the Office of the State Auditor.

(4)(a) Any recipient who is accepted into the program by the Mississippi Office of the State Auditor and who fails to complete undergraduate- or graduate-level coursework toward a degree in accounting, or withdraws from school at any time before completing his or her education, shall be liable to repay the Office of the State Auditor for all monies received during the time the recipient was in the program, at the rate of pay received by the employee while in the program, including benefits paid by the agency for the participant, and monies received for tuition, books and related fees used to pursue their degree with interest accruing at ten percent (10%) per annum from the date the recipient failed or withdrew from school. The recipient also will not be liable for repayment for any money earned during the required summer hours. This money shall be considered earned by the recipient at the federal minimum wage rate.

(b) All paid internship compensation received by the recipient while in school shall be considered earned conditioned upon the fulfillment of the terms and obligations of the paid internship contract and this section. However, no recipient of the paid internship shall accrue personal or major medical leave while the recipient is pursuing junior or senior undergraduate-level year coursework toward a bachelor's degree in accounting or graduate-level coursework toward a master's degree in accounting. The recipient shall not be liable for liquidated damages.

(c) If the recipient does not work as an auditor at the Office of the State Auditor for the period required under subsection (2)(d) of this section, the recipient shall be liable for repayment on demand of the remaining portion of the compensation that the recipient was paid while in the program which has not been unconditionally earned, with interest accruing at ten percent (10%) per annum from the recipient's date of graduation or the date that the recipient last worked at the Office of the State Auditor, whichever is the later date. In addition, there shall be included in any contract for paid student internship a provision for liquidated damages equal to Five Thousand Dollars ($5,000.00) which may be reduced on a pro rata basis for each year served under such contract.

HISTORY: Laws, 2008, ch. 558, § 4; Laws, 2009, ch. 546, § 1, eff from and after passage (approved Apr. 15, 2009).

§ 7-7-205. Surety bonds required.

The director, the assistant director, and all accountants and auditors of the department shall be required to execute surety bonds in such amounts as the state auditor may deem sufficient to ensure faithful performance of duties and financial accountability, provided the amount of such bond of the director shall not be less than Twenty-five Thousand Dollars ($25,000.00). The costs of such bonds shall be paid out of the department of audit fund in the same manner as other expenses are paid.

HISTORY: Codes, 1942, § 3877-08; Laws, 1948, ch. 202, § 8; Laws, 1952, ch. 176, § 8.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-207. Compensation of director.

The director of the department shall receive compensation as set by the state auditor which shall not exceed the salary of the state auditor as fixed by law.

HISTORY: Codes, 1942, § 3877-03; Laws, 1948, ch. 202, § 3; Laws, 1952, ch. 176, § 3; Laws, 1958, ch. 322; Laws, 1966, ch. 445, § 5; Laws, 1970, ch. 469, § 1; Laws, 1979, ch. 512, § 1, eff from and after July 1, 1979.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-209. Travel and other expenses.

The state auditor, director, and all employees of the department required to travel in the performance of official duties shall be reimbursed for actual subsistence and transportation expenses incurred by them while traveling away from home, as provided by law. The office of the department shall be supplied with all necessary supplies, stationery, printing, furniture, and equipment, which shall be purchased at the lowest and best prices obtainable. All salaries, travel, and other expenses of the department, including costs of purchases as aforesaid, shall be paid monthly out of the state department of audit fund, upon requisitions or vouchers approved by the director or, in his absence, by the assistant director.

HISTORY: Codes, 1942, § 3877-04; Laws, 1948, ch. 202, § 4; Laws, 1952, ch. 176, § 4.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-211. Powers and duties of department.

The department shall have the power and it shall be its duty:

(a) To identify and define for all public offices of the state and its subdivisions generally accepted accounting principles or other accounting principles as promulgated by nationally recognized professional organizations and to consult with the State Fiscal Officer in the prescription and implementation of accounting rules and regulations;

(b) To provide best practices, for all public offices of regional and local subdivisions of the state, systems of accounting, budgeting and reporting financial facts relating to said offices in conformity with legal requirements and with generally accepted accounting principles or other accounting principles as promulgated by nationally recognized professional organizations; to assist such subdivisions in need of assistance in the installation of such systems; to revise such systems when deemed necessary, and to report to the Legislature at periodic times the extent to which each office is maintaining such systems, along with such recommendations to the Legislature for improvement as seem desirable;

(c) To study and analyze existing managerial policies, methods, procedures, duties and services of the various state departments and institutions upon written request of the Governor, the Legislature or any committee or other body empowered by the Legislature to make such request to determine whether and where operations can be eliminated, combined, simplified and improved;

(d) To postaudit each year and, when deemed necessary, preaudit and investigate the financial affairs of the departments, institutions, boards, commissions, or other agencies of state government, as part of the publication of a comprehensive annual financial report for the State of Mississippi, or as deemed necessary by the State Auditor. In complying with the requirements of this paragraph, the department shall have the authority to conduct all necessary audit procedures on an interim and year-end basis;

(e) To postaudit and, when deemed necessary, preaudit and investigate separately the financial affairs of (i) the offices, boards and commissions of county governments and any departments and institutions thereof and therein; (ii) public school districts, departments of education and junior college districts; and (iii) any other local offices or agencies which share revenues derived from taxes or fees imposed by the State Legislature or receive grants from revenues collected by governmental divisions of the state; the cost of such audits, investigations or other services to be paid as follows: Such part shall be paid by the state from appropriations made by the Legislature for the operation of the State Department of Audit as may exceed the sum of Thirty-five Dollars ($35.00) per man-hour for the services of each staff person engaged in performing the audit or other service plus the actual cost of any independent specialist firm contracted by the State Auditor to assist in the performance of the audit, which sum shall be paid by the county, district, department, institution or other agency audited out of its general fund or any other available funds from which such payment is not prohibited by law. Costs paid for independent specialists or firms contracted by the State Auditor shall be paid by the audited entity through the State Auditor to the specialist or firm conducting the postaudit.

Each school district in the state shall have its financial records audited annually, at the end of each fiscal year, either by the State Auditor or by a certified public accountant approved by the State Auditor. Beginning with the audits of fiscal year 2010 activity, no certified public accountant shall be selected to perform the annual audit of a school district who has audited that district for three (3) or more consecutive years previously. Certified public accountants shall be selected in a manner determined by the State Auditor. The school district shall have the responsibility to pay for the audit, including the review by the State Auditor of audits performed by certified public accountants;

(f) To postaudit and, when deemed necessary, preaudit and investigate the financial affairs of the levee boards; agencies created by the Legislature or by executive order of the Governor; profit or nonprofit business entities administering programs financed by funds flowing through the State Treasury or through any of the agencies of the state, or its subdivisions; and all other public bodies supported by funds derived in part or wholly from public funds, except municipalities which annually submit an audit prepared by a qualified certified public accountant using methods and procedures prescribed by the department;

(g) To make written demand, when necessary, for the recovery of any amounts representing public funds improperly withheld, misappropriated and/or otherwise illegally expended by an officer, employee or administrative body of any state, county or other public office, and/or for the recovery of the value of any public property disposed of in an unlawful manner by a public officer, employee or administrative body, such demands to be made (i) upon the person or persons liable for such amounts and upon the surety on official bond thereof, and/or (ii) upon any individual, partnership, corporation or association to whom the illegal expenditure was made or with whom the unlawful disposition of public property was made, if such individual, partnership, corporation or association knew or had reason to know through the exercising of reasonable diligence that the expenditure was illegal or the disposition unlawful. Such demand shall be premised on competent evidence, which shall include at least one (1) of the following: (i) sworn statements, (ii) written documentation, (iii) physical evidence, or (iv) reports and findings of government or other law enforcement agencies. Other provisions notwithstanding, a demand letter issued pursuant to this paragraph shall remain confidential by the State Auditor until the individual against whom the demand letter is being filed has been served with a copy of such demand letter. If, however, such individual cannot be notified within fifteen (15) days using reasonable means and due diligence, such notification shall be made to the individual's bonding company, if he or she is bonded. Each such demand shall be paid into the proper treasury of the state, county or other public body through the office of the department in the amount demanded within thirty (30) days from the date thereof, together with interest thereon in the sum of one percent (1%) per month from the date such amount or amounts were improperly withheld, misappropriated and/or otherwise illegally expended. In the event, however, such person or persons or such surety shall refuse, neglect or otherwise fail to pay the amount demanded and the interest due thereon within the allotted thirty (30) days, the State Auditor shall have the authority and it shall be his duty to institute suit, and the Attorney General shall prosecute the same in any court of the state to the end that there shall be recovered the total of such amounts from the person or persons and surety on official bond named therein; and the amounts so recovered shall be paid into the proper treasury of the state, county or other public body through the State Auditor. In any case where written demand is issued to a surety on the official bond of such person or persons and the surety refuses, neglects or otherwise fails within one hundred twenty (120) days to either pay the amount demanded and the interest due thereon or to give the State Auditor a written response with specific reasons for nonpayment, then the surety shall be subject to a civil penalty in an amount of twelve percent (12%) of the bond, not to exceed Ten Thousand Dollars ($10,000.00), to be deposited into the State General Fund;

(h) To investigate any alleged or suspected violation of the laws of the state by any officer or employee of the state, county or other public office in the purchase, sale or the use of any supplies, services, equipment or other property belonging thereto; and in such investigation to do any and all things necessary to procure evidence sufficient either to prove or disprove the existence of such alleged or suspected violations. The Department of Investigation of the State Department of Audit may investigate, for the purpose of prosecution, any suspected criminal violation of the provisions of this chapter. For the purpose of administration and enforcement of this chapter, the enforcement employees of the Department of Investigation of the State Department of Audit have the powers of a law enforcement officer of this state, and shall be empowered to make arrests and to serve and execute search warrants and other valid legal process anywhere within the State of Mississippi. All enforcement employees of the Department of Investigation of the State Department of Audit hired on or after July 1, 1993, shall be required to complete the Law Enforcement Officers Training Program and shall meet the standards of the program;

(i) To issue subpoenas, with the approval of, and returnable to, a judge of a chancery or circuit court, in termtime or in vacation, to examine the records, documents or other evidence of persons, firms, corporations or any other entities insofar as such records, documents or other evidence relate to dealings with any state, county or other public entity. The circuit or chancery judge must serve the county in which the records, documents or other evidence is located; or where all or part of the transaction or transactions occurred which are the subject of the subpoena;

(j) In any instances in which the State Auditor is or shall be authorized or required to examine or audit, whether preaudit or postaudit, any books, ledgers, accounts or other records of the affairs of any public hospital owned or owned and operated by one or more political subdivisions or parts thereof or any combination thereof, or any school district, including activity funds thereof, it shall be sufficient compliance therewith, in the discretion of the State Auditor, that such examination or audit be made from the report of any audit or other examination certified by a certified public accountant and prepared by or under the supervision of such certified public accountant. Such audits shall be made in accordance with generally accepted standards of auditing, with the use of an audit program prepared by the State Auditor, and final reports of such audits shall conform to the format prescribed by the State Auditor. All files, working papers, notes, correspondence and all other data compiled during the course of the audit shall be available, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day. The expense of such certified reports shall be borne by the respective hospital, or any available school district funds other than minimum program funds, subject to examination or audit. The State Auditor shall not be bound by such certified reports and may, in his or their discretion, conduct such examination or audit from the books, ledgers, accounts or other records involved as may be appropriate and authorized by law;

(k) The State Auditor shall have the authority to contract with qualified public accounting firms to perform selected audits required in paragraphs (d), (e), (f) and (j) of this section, if funds are made available for such contracts by the Legislature, or if funds are available from the governmental entity covered by paragraphs (d), (e), (f) and (j). Such audits shall be made in accordance with generally accepted standards of auditing. All files, working papers, notes, correspondence and all other data compiled during the course of the audit shall be available, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day;

(*l*) The State Auditor shall have the authority to establish training courses and programs for the personnel of the various state and local governmental entities under the jurisdiction of the Office of the State Auditor. The training courses and programs shall include, but not be limited to, topics on internal control of funds, property and equipment control and inventory, governmental accounting and financial reporting, and internal auditing. The State Auditor is authorized to charge a fee from the participants of these courses and programs, which fee shall be deposited into the Department of Audit Special Fund. State and local governmental entities are authorized to pay such fee and any travel expenses out of their general funds or any other available funds from which such payment is not prohibited by law;

(m) Upon written request by the Governor or any member of the State Legislature, the State Auditor may audit any state funds and/or state and federal funds received by any nonprofit corporation incorporated under the laws of this state;

(n) To conduct performance audits of personal or professional service contracts by state agencies on a random sampling basis, or upon request of the State Personal Service Contract Review Board under Section 25-9-120(3);

(o) At the discretion of the State Auditor, the Auditor may conduct risk assessments, as well as performance and compliance audits based on Generally Accepted Government Auditing Standards (GAGAS) of any state-funded economic development program authorized under Title 57, Mississippi Code of 1972. After risk assessments or program audits, the State Auditor may conduct audits of those projects deemed high-risk, specifically as they identify any potential wrongdoing or noncompliance based on objectives of the economic development program. The Auditor is granted authority to gather, audit and review data and information from the Mississippi Development Authority or any of its agents, the Department of Revenue, and when necessary under this paragraph, the recipient business or businesses or any other private, public or nonprofit entity with information relevant to the audit project. The maximum amount the State Auditor may bill the oversight agency under this paragraph in any fiscal year is One Hundred Thousand Dollars ($100,000.00), based on reasonable and necessary expenses;

(p) To review and approve any independent auditor selected by the Mississippi Lottery Corporation in accordance with Section 27-115-89, to conduct an annual audit of the corporation; and

(q) To conduct audits or investigations of the Mississippi Lottery Corporation if in the opinion of the State Auditor conditions justify such audits or investigations.

HISTORY: Codes, 1942, § 3877-05; Laws, 1948, ch. 202, § 5; Laws, 1952, ch. 176, § 5; Laws, 1960, ch. 375; Laws, 1968, ch. 496, § 1, ch. 497, § 1; Laws, 1979, ch. 512, § 2; Laws, 1982, ch. 466, § 2; Laws, 1984, ch. 450; Laws, 1985, ch. 455, § 2; Laws, 1986, ch. 488, § 3; Laws, 1989, ch. 427, § 1; Laws, 1989, ch. 459, § 1; Laws, 1989, ch. 532, § 33; Laws, 1994, ch. 332, § 1; Laws, 1995, ch. 336, § 1; Laws, 1997, ch. 609, § 6; Laws, 2003, ch. 316, § 1; Laws, 2004, ch. 461, § 1; Laws, 2004, ch. 562, § 1; Laws, 2008, ch. 558, § 1; Laws, 2009, ch. 516, § 4; Laws, 2009, ch. 538, § 2; Laws, 2012, ch. 567, § 1; Laws, 2013, ch. 520, § 1; Laws, 2014, ch. 425, § 1; Laws, 2014, ch. 427, § 1, eff from and after July 1, 2014; Laws, 2018, 1st Ex Sess, ch. 2, § 47, eff from and after September 1, 2018.

Joint Legislative Committee Note — Section 1 of ch. 461, Laws of 2004, effective from and after July 1, 2004 (approved April 27, 2004), amended this section. Section 1 of ch. 562, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 8, 2004 meeting of the Committee.

Section 2 of ch. 538, Laws of 2009, effective from and after passage (approved on April 15, 2009), amended this section. Section 4 of ch. 516, Laws of 2009, effective from and after passage (approved April 8, 2009) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Section 1 of Chapter 425, Laws of 2014, effective from and after July 1, 2014, (approved March 24, 2014), amended this section. Section 1 of Chapter 427, Laws of 2014, effective from and after July 1, 2014 (approved March 24, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2009, ch. 516 § 1 provides:

"SECTION 1. This act shall be entitled and may be cited as the "Children First Act of 2009."

Laws of 2018, 1st Extraordinary Session, ch. 1, § 13, effective from and after August 29, 2018, provides:

"SECTION 13. The Department of Audit shall conduct and/or enter into contracts for a performance audit of any projects under the Mississippi Department of Transportation. In addition to other factors, the audit shall assess the effect of engineering fees on projects and whether the fees are excessive. The performance audit shall be completed by not later than December 31, 2019. The Department of Audit shall be reimbursed for all expenses of the audit by the Mississippi Department of Transportation. If the Department of Audit enters into a contract with a private entity for the audit required under this section, the department shall ensure that such entity is adequately experienced with auditing other state departments of transportation or similar departments or agencies."

Amendment Notes — The 2018 1st Extraordinary Session amendment, effective September 1, 2018, added (p) and (q).

Cross References — Executive Director of the Department of Finance and Administration prescribing regulations and forms, see § 7-7-47.

Funding of audits and services authorized by subsection (k) of this section, see § 7-7-213.

Publication of synopsis of county audit report, see § 7-7-221.

Audits of county cooperative service districts, see § 19-3-109.

County budget law, see §§ 19-11-1 et seq.

Duties of county auditor, see §§ 19-17-1 et seq.

Municipal budget law, see §§ 21-35-1 et seq.

Duties of Executive Director of the Department Finance and Administration in connection with municipal budgets, see § 21-35-29.

Duties in making reports regarding state-owned automobiles, see § 25-1-81.

Provision that, in the event that a physical audit reveals that items which are included on an agency's inventory are missing or otherwise unaccounted for, the Executive Director of the Department of Finance and Administration is authorized to proceed to recover the value of the missing items, see § 29-9-17.

Requirement that a county central purchase system comply with the requirements of the State Department of Audit, see § 31-7-103.

Requirement that county receiving clerks acknowledge receipt of goods and services in compliance with receipting system prescribed by State Department of Audit, see § 31-7-109.

Duty to design and prescribe forms and systems to implement central purchasing by counties, see § 31-7-113.

Co-operation in studying costs of hazard insurance on school buildings and facilities, see § 37-3-7.

Procedures under uniform system of accounts for school districts, see §§ 37-37-1 et seq.

Duties of department of audit in working with state hospital commission, see

§ 41-7-35.

Duty to print arrest tickets under the Uniform Arrest Ticket Law, see § 63-9-21.

Accounts and depreciation reports of public utilities, see § 77-3-31.

JUDICIAL DECISIONS

1. In general.

In an action to hold county supervisors personally liable for unauthorized expenditures of county funds, the chancery court properly overruled defendants' demurrer to the complaint where the suit, filed by virtue of this section, alleged that defendants were liable under § 19-13-37 [Repealed], which provides for a taxpayers suit against officials who misappropriate funds. Mathis v. State, 379 So. 2d 929, 1980 Miss. LEXIS 1852 (Miss. 1980).

No particular form of demand upon a county board of supervisors for payment into the county treasury of misappropriated funds is required by this section [Code 1942, § 3877-05], provided it notifies the persons to whom it is addressed of the alleged improper expenditures and gives them an opportunity to perform their duties as to them. State ex rel. Patterson v. Warren, 254 Miss. 293, 180 So. 2d 293, 1966 Miss. LEXIS 1592 (Miss. 1966).

This section [Code 1942, § 3877-05] does not operate to create liability against public officers, employees, and administrative bodies, for illegal expenditures of public funds, but merely authorizes recovery where liability otherwise exists. Golding v. Salter, 234 Miss. 567, 107 So. 2d 348, 1958 Miss. LEXIS 530 (Miss. 1958).

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement that a water and sewer District prepare an annual audit, however the District is subject to being audited by the State Auditor's office. Gillespie, Oct. 30, 1991, A.G. Op. #91-0794.

Magnolia Venture Capital Corporation is subject to oversight and review by state agencies. For instance, the joint legislative committee on Performance Evaluation and Expenditure Review and the State Auditor would have oversight and investigative jurisdictions over the activities of Magnolia Capital Corporation and the Magnolia Venture Capital Fund Limited Partnership. See Sections 5-3-57(e) and 7-7-211(f). Williams, December 20, 1996, A.G. Op. #96-0834.

The State Auditor has no authority to demand repayment of public funds if the State, or a political subdivision thereof, obtains a judgment for the balance due against all appropriate parties, and the execution is returned unsatisfied. Bryant, Aug. 8, 1997, A.G. Op. #97-0486.

If the primary duties of an Auditing Accountant Investigator are not of a law enforcement nature, then such employee is not an enforcement employee and does not have the powers of a peace officer and is not required to attend the Law Enforcement Officers Training Program. Bryant, Nov. 19, 1997, A.G. Op. #97-0700.

Any employee of the State Department of Audit that is hired or transferred into the Department of Investigations as an enforcement employee after July 1, 1993, must complete the Law Enforcement Officers Training Program. Bryant, Nov. 19, 1997, A.G. Op. #97-0700.

Where the State of Mississippi has an ownership interest, in a pool of funds, the money due the state is public money or public funds, subject to demand by the auditor in the case of misappropriation, from the time it first comes into either actual or constructive possession, of the private entity, though its specific amount is not yet determined; at such time as the state's share can be determined, demand can be made by the auditor and suit to recover it instituted in the event repayment is not forthcoming. Bryant, October 2, 1998, A.G. Op. #98-0622

The State Auditor has no authority or duty to audit and/or investigate foundations dedicated in whole or in part to university fundraising whether or not the foundations are located on university property or whether university employees perform work for the foundations. Bryant, November 6, 1998, A.G. Op. #98-0676

The statute gives the State Auditor authority to conduct inventories of evidence vaults/rooms of sheriffs and police departments for accountability purposes. Bryant, March 10, 2000, A.G. Op. #2000-0081.

When an inmate housed in county or local facilities is improperly worked on private property, it is possible to determine a monetary loss or cost to the governmental entity and to assess in monetary terms a benefit to the private citizen or company that benefits from the inmate's work and to require the beneficiary to pay the assessment to the governmental entity involved. McLeod, March 17, 2000, A.G. Op. #2000-0142.

The State Auditor has authority to utilize Section 7-7-211 to recover costs for the failure or refusal of a municipality to submit an annual audit if and when the payment of the cost of the audit to the Department of Audit was improperly withheld by the governing authority of the municipality. Bryant, May 5, 2000, A.G. Op. #2000-0185.

The language in subsection (h) is sufficient for the Department of Audit to expend funds to obtain information or evidence; however, such may be done only during the course of an investigation. Bryant, Mar. 30, 2001, A.G. Op. #01-0168.

Planning and Development Districts are either public entities or instrumentalities of political subdivisions of the state and, as such, are subject to audit by the State Auditor. McLeod, Nov. 26, 2003, A.G. Op. 03-0573.

If an association, such as the Mississippi School Superintendents Association, or Mississippi School Board Association, administers programs financed by funds flowing through a political subdivision or political subdivisions, then the Department of Audit would be authorized to audit and investigate the association's financial affairs. Chaney, June 14, 2004, A.G. Op. 04-0228.

The mere receipt of dues from a public entity would not subject a nonprofit entity to the audit provisions of subsection (f) of this section. Clay, Jan. 24, 2005, A.G. Op. 04-0623.

The auditor has the discretion to conduct or not conduct an audit under subsection (m) of this section. Clay, Jan. 24, 2005, A.G. Op. 04-0623.

While it may be necessary, as part of a performance audit of the Department of Human Services, to examine the performance of subrecipients/subgrantees and providers of programs receiving CCDF and/or TANF funds, and "Designated Agents" of grants and other funds from the Department of Human Services, no provision of the law can be located authorizing the State Auditor or the State Department of Audit to bill Planning and Development Districts directly for performance audit services. Bryant, May 27, 2005, A.G. Op. 05-0232.

The Office of the State Auditor can bill the Planning and Development Districts directly for actual costs/expenses for audits of subrecipients/subgrantees and providers of programs receiving CCDF and/or TANF funds from the Department of Human Services. Bryant, May 27, 2005, A.G. Op. 05-0232.

§ 7-7-213. Payment of costs of audits and other services.

(1) The costs of audits and other services required by Sections 7-7-201 through 7-7-215, except for those audits and services authorized by Section 7-7-211(k) which shall be funded by appropriations made by the Legislature from such funds as it deems appropriate, shall be paid from a special fund hereby created in the State Treasury, to be known as the State Department of Audit Fund, into which will be paid each year the amounts received for performing audits required by law. Except for any municipality required under this chapter to be audited by the State Auditor, the amounts to be charged for performing audits and other services shall be the actual cost, not to exceed Thirty-five Dollars ($35.00) per man hour plus the actual cost of any indepen-

dent specialist firm contracted by the State Auditor to assist in the performance of the audit. Costs paid for independent specialists or firms contracted by the State Auditor shall be paid by the audited entity through the State Auditor to the specialist or firm conducting the audit. In the event of failure by any unit of government to pay the charges authorized herein, the Department of Audit shall notify the State Fiscal Officer, and upon a determination that the charges are substantially correct, the State Fiscal Officer shall notify the defaulting unit of his determination. If payment is not made within thirty (30) days after such notification, the State Fiscal Officer shall notify the State Treasurer and Department of Public Accounts that no further warrants are to be issued to the defaulting unit until the deficiency is paid.

(2) The cost of any service by the department not required of it under the provisions of the cited sections but made necessary by the willful fault or negligence of an officer or employee of any public office of the state shall be recovered (i) from such officer or employee and/or surety on official bond thereof and/or (ii) from the individual, partnership, corporation or association involved, in the same manner and under the same terms, when necessary, as provided the department for recovering public funds in Section 7-7-211.

(3) The State Auditor shall deliver a copy of any audit of the fiscal and financial affairs of a county to the chancery clerk of such county and shall deliver a notice stating that a copy of such audit is on file in the chancery clerk's office to some newspaper published in the county to be published. If no newspaper is published in the county, a copy of such notice shall be delivered to a newspaper having a general circulation therein.

HISTORY: Codes, 1942, § 3877-06; Laws, 1948, ch. 202, § 6; Laws, 1952, ch. 176, § 6; Laws, 1979, ch. 512, § 3; Laws, 1984, ch. 488, § 123; Laws, 1985, ch. 455, § 3; Laws, 1989, ch. 459, § 2; Laws, 1989, ch. 532, § 34; Laws, 2008, ch. 558, § 2; Laws, 2012, ch. 567, § 2; Laws, 2013, ch. 520, § 2; Laws, 2014, ch. 425, § 2, eff from and after July 1, 2014.

Editor's Notes — Laws of 1984, ch. 488, § 341, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-214. Payment of costs of audits by governmental entities which receive reimbursement from federal government; disposition of amounts collected.

This section shall apply only to single audits of federal and state funds of governmental entities conducted by the department pursuant to the Single

Audit Act of 1984. Notwithstanding any provision of Section 7-7-213 to the contrary, the State Auditor is authorized to charge governmental entities the entire audit cost for which such entities may receive reimbursement from the federal government for the cost of that portion of the single audit that covers the audit requirements associated with federal funds. The costs collected by the department under this section shall be deposited into the State Department of Audit special fund.

HISTORY: Laws, 1986, ch. 488, § 4, eff from and after passage (approved April 15, 1986).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-215. Reports; applicability of generally accepted auditing standards; retention of audit materials; access to records of entities subject to audit.

(1) Upon the completion of each audit, the department shall prepare a report which shall set forth the facts of such audit in the most comprehensive form, and the original copy of such report shall be filed in the office to which it pertains, as a permanent record; one (1) copy thereof shall be filed in the office of the department, subject to public inspection, and one (1) copy shall be preserved for use by the Governor and/or the Legislature. Other provisions notwithstanding, all work papers associated with an audit shall be confidential, but available to subsequent auditors engaged in performing the entities' subsequent audit. The director shall require such financial reports from every public office and taxing body as he may deem necessary and for such period as he may designate, and at the end of each fiscal year the State Auditor and director shall prepare and publish a report of comparative financial statistics covering all public offices of the state over which the department has accounting and auditing supervision. The Governor may direct the State Auditor and/or the director of the department to make any special report on any subject under their jurisdiction and make any special audit or investigation he may desire, such directives to be issued in writing.

(2) All audits conducted by the department shall be in accordance with generally accepted auditing standards, as promulgated by nationally recognized professional organizations. Audit and investigative reports, work papers and other evidence and related supportive material shall be retained and filed according to an agreement between the State Auditor and the Department of Archives and History. In conducting audits pursuant to this article, the department shall have access to all records, documents, books, papers and other evidence relating to the financial transactions of any governmental entity subject to audit by the department.

HISTORY: Codes, 1942, § 3877-07; Laws, 1948, ch. 202, § 7; Laws, 1952, ch. 176, § 7; Laws, 1986, ch. 488, § 5; Laws, 2009, ch. 546, § 2, eff from and after passage (approved Apr. 15, 2009).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Publication of a synopsis of the report required by this section, see § 7-7-221.

Department of Archives and History generally, see §§ 39-5-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The statute requires that a separate report be created at the close of each investigation. McLeod, May 19, 2000, A.G. Op. #2000-0240.

Section 7-7-215 must be read in paria materia with the Mississippi Public Records Act and the law enforcement exceptions contained in Section 45-29-1 [Repealed] and 45-29-3 [Repealed]; thus, although the Auditor must file the required report, records of an investigation that would harm an investigation, reveal the identity of informants, prematurely release information that would impede the State Auditor's enforcement, investigative, or detection efforts, disclose investigatory techniques, deprive a person of the right to a fair trial, or endanger the life or safety of a public official or law enforcement officer, may be omitted from the report. McLeod, May 19, 2000, A.G. Op. #2000-0240.

An investigation report should be completed and filed as soon as reasonably possible after completion of the investigation and any litigation, as deemed appropriate in the discretion of the auditor. McLeod, May 19, 2000, A.G. Op. #2000-0240.

It is within the discretion of the Board of the Greenwood Public School District to determine how best to file as a permanent record the State Auditor's Report of Investigation. From a practical standpoint, making the report a part of the minutes would comply with and achieve the purpose of Miss. Code Ann. § 7-7-215. Oakes, February 9, 2007, A.G. Op. #07-00023, 2007 Miss. AG LEXIS 18.

§ 7-7-216. Independent audit of office of State Auditor.

No less than once during each four-year term of the State Auditor, the Legislature shall receive bids from an independent, certified public accounting firm for an opinion and a legal compliance audit of the Office of the State Auditor. Such firm, so selected, shall report its findings and recommendations to the Legislature and the Governor. The cost of this audit shall be paid from funds appropriated for this purpose by the Legislature.

HISTORY: Laws, 1986, ch. 499, § 6, eff from and after passage (approved April 18, 1986).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-217. Record of exceptions taken as result of audits.

The state auditor, as ex-officio head of the state department of audit, shall maintain a continuing record of exceptions taken as a result of any and all audits made by the state department of audit, which shall show the name of the state department, agency, or subdivision audited, the date or approximate date when each exception was taken, a brief description of such exception, the immediate steps taken to effect correction or restitution, any subsequent actions taken or recommended to be taken, and the final disposition of such exceptions when such disposition occurs.

HISTORY: Codes, 1942, § 3877-11; Laws, 1970, ch. 462, § 1, eff from and after passage (approved April 3, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Executive Director of Department of Finance and Administration reporting exceptions to legislative committee, see § 7-7-219.

§ 7-7-218. Preparation of report by State Auditor where public officer or employee fails or refuses to make report; correction and publication of finding of substantial noncompliance where public officer or employee fails to correct finding; payment of expenses.

(1) If any officer or employee of the state or subdivision shall refuse or fail to make any report to the department, the State Auditor shall proceed to make the report or cause the report to be made. The expense for such report shall be personally borne by said officer or employee, and he or she shall be responsible for the payment of the expense incurred.

(2) If any officer or employee of a state agency or political subdivision refuses or fails to correct any audit finding of substantial noncompliance that has existed for three (3) consecutive years, the State Auditor shall proceed to cause the finding to be made in compliance and publish the findings and action. The expense for such correction and publication of a finding of substantial noncompliance shall be borne by the state agency or political subdivision involved.

HISTORY: Laws, 1986, ch. 488, § 6; Laws, 2002, ch. 317, § 1, eff from and after July 1, 2002.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

OPINIONS OF THE ATTORNEY GENERAL

The term "subdivision" in the statute includes municipalities. Bryant, May 5, 2000, A.G. Op. #2000-0185.

The State Auditor has authority to utilize Section 7-7-211 to recover costs for the failure or refusal of a municipality to submit an annual audit if and when the payment of the cost of the audit to the Department of Audit was improperly withheld by the governing authority of the municipality. Bryant, May 5, 2000, A.G. Op. #2000-0185.

If an officer or employee of the state or subdivision fails or refuses to make any report as set forth in Section 7-7-218, and that failure or refusal constitutes a breach of his or her faithful performance of duty, then recovery may be sought from the applicable bond. Bryant, May 5, 2000, A.G. Op. #2000-0185.

§ 7-7-219. Report of exceptions to legislative committee.

A report of exceptions taken by the auditor shall be made by the state auditor to the general legislative investigating committee, or any standing committee of the legislature that may request such reports, and any legislator who may request such reports. Said reports shall be furnished within thirty (30) days after the close of each fiscal year, said report to list all exceptions taken within that fiscal year and exceptions previously taken in which no final disposition has been made. The said report shall summarize each exception listed and provide information appearing on the record referred to in Section 7-7-217.

HISTORY: Codes, 1942, § 3877-12; Laws, 1970, ch. 462, § 2, eff from and after passage (approved April 3, 1970).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-7-221. Publication of synopsis of county audit report.

(1) As soon as possible after an annual audit of the fiscal and financial affairs of a county by the State Auditor, as the head of the State Department of Audit, has been made and a copy of such report of audit or examination has been filed with the board of supervisors of such county and the clerk thereof, as required in Section 7-7-215, the clerk of the board of supervisors shall publish a synopsis of such report in a form prescribed by the State Auditor.

(2) The clerk of the board of supervisors shall deliver a copy of the aforesaid synopsis to some newspaper published in the county, and, if no newspaper is published in the county, then to a newspaper having a general circulation therein, to be published.

(3) The cost of publishing the aforesaid synopsis by some newspaper in a county or by some newspaper having a general circulation therein, as hereinbefore provided, shall be paid for out of the general fund of the county upon a detailed itemized statement thereof being furnished to the clerk of the board of supervisors of such county by the publisher of the newspaper, accompanied by one (1) copy of the proof of publication thereof. The cost of such publication shall be based on the rate now fixed by law for publishing legal notices, and it shall be mandatory upon the board of supervisors of the county and the clerk thereof to pay such costs out of the county general fund.

(4) The clerk shall forward a copy of the published synopsis to the State Auditor within sixty (60) days of its publication. If the synopsis does not substantially satisfy the requirements of this section, the State Auditor is authorized to prepare the synopsis and have it published in accordance with this section at cost to the county.

HISTORY: Former § 7-7-221 [Codes, 1942, § 3877-10; Laws, 1948, ch. 426, §§ 1-4; Laws, 1958, ch. 332, §§ 2-5] repealed by Laws, 1979, ch. 512, § 5. New § 7-7-221 enacted by Laws, 1985, ch. 455, § 12; Laws, 1988 Ex Sess, ch. 14, § 5; Laws, 1996, ch. 366, § 1, eff from and after October 1, 1996.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

A former § 7-7-221 [Codes, 1942, § 3877-10; Laws, 1948, ch. 426, §§ 1-4; Laws, 1958, ch. 332, §§ 2-5; repealed by Laws, 1979, ch. 512, § 5.] also concerned publication of a synopsis of county audit report.

Cross References — Powers and duties of department of audit, see § 7-7-211.

RESEARCH REFERENCES

ALR.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 7-7-223. Repealed.

Repealed by Laws, 1985, ch. 455, § 14, eff from and after March 29, 1985.

§ 7-7-223. [Codes, 1942, § 3884; Laws, 1938, ch. 157]

Editor's Notes — Former § 7-7-223 excluded municipalities from coverage by the provisions of this article.

§ 7-7-225. Contract for legal services.

The State Auditor, when conducting agency audits, shall test to determine whether or not the state institutions of higher learning and any state agency which does not draw warrants on the Treasury have either received approval of the Attorney General or complied with the provisions of Section 7-5-39, with regard to any contract for legal services.

HISTORY: Laws, 1991, ch. 473 § 2; Laws, 2012, ch. 546, § 8, eff from and after July 1, 2012.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Direction that Department of Finance and Administration not process any warrant for payment of legal services without determining that the services and contract were approved by the Attorney General and the State Personnel Board, see § 27-104-105.

CHAPTER 9.

STATE TREASURER

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§ 7-9-1. Office hours.

The state treasurer shall keep his office at the seat of the government, and shall keep the same open Monday through Friday of each week for eight hours each day.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (1); 1857, ch. 6, art. 50; 1871, § 151; 1880, § 238; 1892, § 4203; 1906, § 4751; Hemingway's 1917, § 7878; 1930, § 7158; 1942, § 4287; Laws, 1904, ch. 196; Laws, 1964, ch. 542, § 5, eff from and after ten days after passage (approved June 11, 1964).

Cross References — Provision that a State Treasurer shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Before whom oath of office is taken, see § 25-1-9.

Place of filing of oath of office, see § 25-1-11.

Requirement of state officials to make bond, see § 25-1-13.

Salary of state treasurer, see § 25-3-31.

§ 7-9-3. Vaults to operate with timelock.

It is not lawful for the treasurer or any other person to enter or be in the treasury department between sunset and sunrise, except in case of fire or other like urgent necessity. At five o'clock or sooner in the afternoon, the vaults shall be closed with a timelock set to open at nine o'clock in the forenoon of the next day, unless it be a Sunday or holiday when it shall be set, if possible, to open at that hour on the next business day. During business hours the timelock shall be so adjusted that a person in charge of the office can instantly lock the safe or vault.

HISTORY: Codes, 1892, § 4204; 1906, § 4752; Hemingway's 1917, § 7879; 1930, § 7159; 1942, § 4288.

§ 7-9-5. Deputy state treasurer and other personnel.

The state treasurer shall be entitled to a bookkeeper, a chief clerk, a bond clerk, and a stenographer to assist him in the discharge of the duties of his office; and he may appoint a deputy who shall possess all the powers and may perform any of the duties of the treasurer. If a deputy treasurer be appointed, he shall also perform all the duties of the chief clerk and shall receive the salary of such clerk, and thereafter no chief clerk shall be employed. The bond of the said deputy shall be one hundred thousand dollars ($100,000.00), and the premium thereon shall be paid as other premiums of state officers.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (1); 1857, ch. 6, art. 50; 1871, § 151; 1880, § 238; 1892, § 4203; 1906, § 4751; Hemingway's 1917, § 7878; 1930, §§ 7158, 7161; 1942, §§ 4287, 4290; Laws, 1904, ch. 196; Laws, 1964, ch. 542, § 5, eff from and after ten days after passage (approved June 11, 1964).

Cross References — Before whom oath of office is to be taken, see § 25-1-9.

Place of filing of oath of office, see § 25-1-11.

Requirement of state officials making bond, see § 25-1-13.

Appointment, duties, and oath of department subordinates, see § 25-3-47.

§ 7-9-7. Bond clerk.

It shall be the duty of the bond clerk to keep a record of all bonds or other securities coming into the possession of the state treasury and to do and perform any other duties required of him by the treasurer. Said clerk shall, before entering upon the duties of his office, execute a good and sufficient bond payable to the state treasurer, in some surety company authorized to do business in Mississippi, in the sum of fifty thousand dollars ($50,000.00), said bond to be conditioned for the faithful discharge of the duties of such clerk and shall be liable for any misfeasance, malfeasance, mistakes, or misappropriations of said clerk, the premium on said bond to be paid as the premium on the state treasurer's bond is paid. The provisions of this section and the bond required shall in no way alter or change the duties, responsibilities, and liabilities of the state treasurer.

HISTORY: Codes, 1930, § 7175; 1942, § 4304; Laws, 1928, Ex. ch. 98.

§ 7-9-9. Duties generally.

It shall be the duty of the state treasurer to receive and keep the moneys of the state in the manner provided by law, to disburse the same agreeably to law, and to take receipts or vouchers for moneys which he shall disburse. He shall keep regular, fair, and proper accounts of the receipts and expenditures of the public money; he shall keep accounts in his books in the name of the state, in which he shall enter the amount of all money, stock, securities, and all other property in the treasury or which may at any time be received by him, keeping the receipts and disbursements of each fiscal year in separate accounts, and closing the same with the close of the fiscal year; and he shall open and keep accounts in his books for all appropriations of money made by law, so that the appropriation of money and the application thereof in conformity thereto may clearly and distinctly appear on the books of the treasury.

HISTORY: Codes, 1848, ch. 20, art. 4 (4); 1857, ch. 6, art. 52; 1871, § 152; 1880, § 239; 1892, § 4205; 1906, § 4753; Hemingway's 1917, § 7880; 1930, § 7160; 1942, § 4289.

Cross References — Auditor issuing warrants on state treasurer for payment of claims, see § 7-7-35.

Co-operation between state treasurer and state department of public accounts, see § 7-7-49.

Duties of state treasurer regarding municipal revolving fund, see § 21-33-401.

Duties of state treasurer under homestead exemption law, see § 27-33-47.

Depositories leaving certain bonds with state treasurer as security, see § 27-105-5.

Duties of state treasurer with respect to proceeds of sale of bonds for the support of the Institute for Technology Development, see § 31-29-11.

Duties of state treasurer with respect to funds for carrying out disability determination functions under Social Security Act, see § 37-33-169.

State treasurer depositing monies into industrial revolving fund, see § 57-9-5.

Membership of state treasurer in Mississippi Business Finance Corporation, see

§ 57-10-167.

Duties of state treasurer with respect to funds collected by state board of pharmacy, see § 73-21-113.

Reserve liabilities of life insurance companies to be deposited with state treasurer, see §§ 83-7-21 through 83-7-25.

Duties of state treasurer in administration of Uniform Disposition of Unclaimed Property Act, see §§ 89-12-1 et seq.

Crime of making false entries or alterations in books of public office, see § 97-21-1.

Duties of the State Treasurer with respect to the Crime Victim's Escrow Account Act, see §§ 99-38-1 et seq.

§ 7-9-11. Separate and distinct accounts of various sources of revenue.

It shall be the duty of the state treasurer to state in the books of the treasury, separately and distinctly, the amount of money received by him on account of state taxes, debts, or on any account whatever for or on behalf of the state, and also an account of the sums he shall pay out of the same, so that the net produce of the whole revenue, and of every branch thereof, and the amount of disbursements and payments of the several demands on the treasury may clearly and distinctly appear.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (7); 1857, ch. 6, art. 53; 1871, § 153; 1880, § 240; 1892, § 4206; 1906, § 4754; Hemingway's 1917, § 7881; 1930, § 7162; 1942, § 4291.

§ 7-9-12. Establishment of clearing accounts and bank accounts; bad checks.

The State Treasurer is authorized to establish such clearing accounts in the State Treasury and such bank accounts in public depositories in conjunction with the State Fiscal Officer as may be necessary to facilitate the deposit, collection investment and disbursement of state funds in the State Treasury as required by law.

The State Treasurer and State Fiscal Officer shall also establish such accounts as necessary to facilitate the handling of bad checks paid into the State Treasury.

The State Treasurer may by regulation provide for the establishment of commercial bank accounts by any state agency, which shall serve as the depository for funds which are collected or held by state agencies and required by law to be deposited in the Treasury. Each such account established shall have a maximum balance to be fixed by the State Treasurer. All such accounts shall bear interest which shall be deposited in the General Fund, except for interest on funds in the account of the Mississippi Employment Security Commission designated as the "Mississippi Employment Security Commission Fixed Price Contract Account." Such interest shall be retained as part of the account to be used by the Mississippi Employment Security Commission solely for Job Training Partnership Act programs.

The State Auditor shall test for compliance with this section in any postaudit, and may, after notice and hearing, levy a civil penalty not to exceed

One Thousand Dollars ($1,000.00) for any violation hereof. The Auditor shall annually report all violations of this section to the Governor and the Legislature.

HISTORY: Laws, 1984, ch. 478, § 4; Laws, 1985, ch. 525, § 9; Laws, 1987, ch. 346, § 1; Laws, 1989, ch. 532, § 35; Laws, 1990, ch. 371, § 1, eff from and after July 1, 1990.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-9-13. Receipts and payments only on warrant; exception for electronic funds transfer.

Except as otherwise provided in Section 7-9-14 of this chapter, it shall not be lawful for the State Treasurer to pay or receive any money on account of the state but on the warrant or certificate of the State Fiscal Officer, issued pursuant to law. When he shall make any disbursement, he shall write or stamp the word "paid" in large characters across the face of the warrant, and shall make an entry in his office of the date of such warrant. The warrant thus cancelled shall be a sufficient voucher for the payment of the same.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (5); 1857, ch. 6, art. 54; 1871, § 154; 1880, § 241; 1892, § 4207; 1906, § 4755; Hemingway's 1917, § 7882; 1930, § 7163; 1942, § 4292; Laws, 1983, ch. 355, § 3; Laws, 1984, ch. 488, § 125; Laws, 1989, ch. 532, § 36, eff from and after July 1, 1989.

Cross References — Substitution of electronic funds transfer for a requisition and use of a warrant for investment purposes, see § 7-9-14.

Deposit and distribution of public monies, see § 25-1-71.

Duplicates of mutilated state, county, town, or levee bonds or warrants, see § 25-55-19.

Crime of forgery and alteration of warrants of Executive Director of Department of Finance and Administration, see § 97-21-61.

§ 7-9-14. Electronic funds transfer for withdrawal, transfer, or deposit of funds for investment purposes.

The State Treasurer is authorized to receive, disburse or transfer public funds under his jurisdiction by means of wire, direct deposit or electronic funds transfer. The State Fiscal Officer is authorized to receive, disburse or transfer public funds between State Treasury accounts without the issuance of warrant. The State Treasurer and State Fiscal Officer shall promulgate the rules, regulations and procedures to substitute an electronic funds transfer or the receipt, disbursement or transfer of public funds between State Treasury accounts for a receipt warrant, requisition and use of a warrant in order to facilitate the collection, transfer, investment and disbursement of public funds. In the instance of electronic transfer of funds, the Treasurer shall provide the State Fiscal Officer the same information as would be required for a requisition and issuance of a warrant. In the instance of receipt, disbursement and transfer between State Treasury accounts, the State Fiscal Officer shall maintain the same information as would be required if an application for a receipt warrant, a requisition for issuance for warrant and a warrant had been issued.

A copy of the record of any electronic funds transfer shall be transmitted by state depositories to the Treasurer who shall file duplicates with the State Fiscal Officer.

HISTORY: Laws, 1983, ch. 355, § 1; Laws, 1984, ch. 478, § 5; Laws, 1984, ch. 488, § 126; Laws, 1987, ch. 346, § 2; Laws, 1989, ch. 532, § 37, eff from and after July 1, 1989.

Editor's Notes — Laws, 1984, ch. 478, §§ 1 and 2, provide as follows:

"SECTION 1. The purpose of this act is to facilitate efficiency in the collection and disbursement procedures of state funds, to promote more timely investment of state funds and to improve the fiscal management of state government.

"SECTION 2. The Chairman of the State Tax Commission, the State Treasurer and the State Auditor shall cooperate and work for the full implementation of this act by developing procedures for the collection and disbursement of funds consistent with the provisions and intent of this act."

Section 3, of chapter 478, Laws, 1984, effective from and after July 1, 1984, provides, for purpose of this section, that requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Section 35, Chapter 478, Laws, 1984, provides that "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Issuance of warrants for payment of claims, see § 7-7-35.

Receipts and payments only on warrant, see § 7-9-13.

Meaning of "treasurer's check" for purpose of implementation of electronic funds transfer, see § 7-9-37.

OPINIONS OF THE ATTORNEY GENERAL

State Treasurer has authority to transfer public funds by wire, direct deposit or electronic transfer; this authority would include direct deposit of payroll of employees, and authority to delay issuance of payroll warrants would not be affected if Treasurer adopted direct deposit procedure. Ranck, Oct. 21, 1992, A.G. Op. #92-0810.

§ 7-9-15. All warrants paid to be registered.

The state treasurer shall register all warrants paid or received in payment of public dues by him, in a book kept for that purpose, noting the number of the warrant, the date, and when paid or received; and the treasurer shall not receive or pay any warrant unless he shall be satisfied that the same is genuine and lawfully issued.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 16 (2); 1857, ch. 6, art. 55; 1871, § 155; 1880, § 242; 1892, § 4208; 1906, § 4756; Hemingway's 1917, § 7883; 1930, § 7164; 1942, § 4293.

§ 7-9-17. Duplicate receipts given when payment made into treasury.

When any payment shall be made into the Treasury in pursuance of any receipt-warrant issued by the State Fiscal Officer, the State Treasurer shall give the person making the payment duplicate receipts, specifying the warrant on which the payment is made, one (1) copy of which shall be filed with the State Fiscal Officer.

HISTORY: Codes, 1857, ch. 6, art. 56; 1871, § 156; 1880, § 243; 1892, § 4209; 1906, § 4757; Hemingway's 1917, § 7884; 1930, § 7165; 1942, § 4294; Laws, 1984, ch. 488, § 127; Laws, 1989, ch. 532, § 38, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-9-19. States taxes collected paid direct to treasurer.

All taxes, fees and penalties that may be hereafter collected for or in the name of the State of Mississippi shall be paid direct to the Treasurer of the state, as now provided by law, by the officer charged with the duty of collecting the same, with an itemized statement to be filed with the State Fiscal Officer, showing from whom collected and to what account to be credited. All fees and commissions that may be due to any officer for collecting same shall be paid to such officer by the State Treasurer on a warrant issued therefor by the State Fiscal Officer. This section shall not apply to ad valorem taxes, nor to any other collection of taxes by tax collectors of the several counties collecting taxes for the state.

Any officer charged with the duty of collecting such taxes, fees and penalties who willfully fails to comply with the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall forfeit all fees and commissions that may be due him for collecting the same and, in addition, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned for six (6) months, or suffer both such fine and imprisonment.

HISTORY: Codes, 1930, § 7180; 1942, § 4309; Laws, 1928, Ex. ch. 30; Laws, 1984, ch. 488, § 128; Laws, 1989, ch. 532, § 39, eff from and after July 1, 1989.

Editor's Notes — Laws, 1984, ch. 488, § 341, provides:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Requirement of tax collector paying over all collected taxes to state treasurer and county treasurer, see § 27-29-11.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

State Tax Collector held not personally liable to city for commissions paid him, and by him paid to State Treasurer, although commissions were unlawfully paid collector. Gully v. Biloxi, 177 Miss. 782, 171 So. 698, 1937 Miss. LEXIS 148 (Miss. 1937).

Requisition of State Tax Collector against commission fund presented to State Auditor held to sufficiently show authorized expenditures. White v. Miller, 159 Miss. 598, 132 So. 745, 1931 Miss. LEXIS 88 (Miss. 1931).

§ 7-9-21. State officials to pay in collections.

All state officials shall make a detailed report to the State Fiscal Officer and pay into the State Treasury all public funds, as defined in Section 7-7-1, which are required to be paid into the Treasury. Such funds shall be deposited in the State Treasury by the end of the next business day following the day that such funds are collected, except as provided elsewhere in this section. The State Fiscal Officer and the State Treasurer are authorized to establish clearing accounts in the State Treasury as may be necessary to facilitate the transfer of monies to municipalities, counties and other special fund accounts, as provided by law. The detailed report hereinabove required shall be fully satisfied when any revenue-collecting agency on its applications for received warrants has stated the amount of money which it has collected from any source whatsoever without having to supply the names of the taxpayers who had remitted such money. At the request of any state agency, the State Fiscal Officer, with the advice and consent of the State Treasurer, may by regulation provide for other than daily deposits of accounts by that state agency. The State Fiscal Officer, with the advice and consent of the State Treasurer, shall determine the frequency and method of deposit for the agency.

HISTORY: Codes, 1930, § 7182; 1942, § 4311; Laws, 1928, Ex. ch. 84; Laws, 1930, ch. 116; Laws, 1954, ch. 385; Laws, 1979, ch. 417, § 1, ch. 500; Laws, 1984, ch. 478, § 6; Laws, 1984, ch. 488, § 129; Laws, 1989, ch. 532, § 40; Laws, 1998, ch. 436, § 1, eff from and after passage (approved March 23, 1998).

Editor's Notes — Laws, 1984, ch. 478, §§ 1 and 2, provide as follows:

"SECTION 1. The purpose of this act is to facilitate efficiency in the collection and disbursement procedures of state funds, to promote more timely investment of state funds and to improve the fiscal management of state government.

"SECTION 2. The Chairman of the State Tax Commission, the State Treasurer and the State Auditor shall cooperate and work for the full implementation of this act by developing procedures for the collection and disbursement of funds consistent with the provisions and intent of this act."

Laws, 1984, ch. 478, § 3, effective from and after July 1, 1984, provides that, for purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Laws, 1984, ch. 478, § 35, provides that "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Disposition of funds by secretary of state, see § 7-9-22.

Deposit of tax commission funds in collection account established under this section, see § 27-3-57.

Collection and deposit of severance taxes, see § 27-25-11.

Tax collector's monthly reports to auditor, see § 27-29-11.

Applicability of this section to funds collected by comptroller, see §§ 27-55-47, 27-57-35, 27-59-51.

Deposit of funds collected by state tax commission from tax on liquefied petroleum gas, see § 27-59-51.

Distribution of sales taxes, see § 27-65-75.

Payment of state tobacco tax into state treasury, see § 27-69-75.

Payment of state wine and beer taxes into state treasury, see § 27-71-337.

Deposit of assessments collected by a court imposing a fine or bail forfeiture for any hazardous moving traffic violation in an emergency medical services operating fund, see § 41-59-61.

Deposit of fees and penalties relating to child care facilities into special fund, see § 43-20-12.

Deposit of funds received by the commissioner of corrections, see § 47-5-77.

Application of this section to the deposit of funds into the Inmate Welfare Fund, see § 47-5-158.

Deposit of funds by department of corrections under correctional industries work program, see § 47-5-513.

Disposition of fees from permit to drill oil or gas well, see § 53-3-13.

Payment of penalties assessed for violation of petroleum substances transportation regulations into oil and gas board fund, see § 53-3-203.

Deposit of fees received by state board of health for hearing aid dealers' license into special fund, see § 73-14-47.

Deposit of monies received by state board of health for regulation of speech pathologists into special fund, see § 73-38-36.

Deposit of monies collected by state board of health for regulation of youth camps into special fund, see § 75-74-19.

Establishment in State Treasury of Public Service Commission Regulation Fund, see § 77-1-6.

Payment of taxes collected under title 83, dealing with insurance, see § 83-1-13.

Disposition of funds received as expenses of inspectors of legal expense insurance sponsors, see § 83-49-27.

Fines and assessments on persons convicted of offenses punishable by more than 1 year of imprisonment, see § 99-19-32.

JUDICIAL DECISIONS

1. In general.

Requisition of State Tax Collector against commission fund presented to State Auditor held to sufficiently show authorized expenditures. White v. Miller, 159 Miss. 598, 132 So. 745, 1931 Miss. LEXIS 88 (Miss. 1931).

§ 7-9-22. Disposition of funds collected by Secretary of State; funding of agency expenses; deposit of monies into State General Fund.

All funds collected by the Office of the Secretary of State, unless otherwise specifically provided for by law, shall be deposited, in accordance with Section 7-9-21, Mississippi Code of 1972, into a special fund hereby created in the State Treasury. Monies in the special fund shall be expended, pursuant to legislative appropriation, to defray the expenses of the Office of the Secretary of State or as otherwise authorized. All unobligated monies in such special fund at the end of the fiscal year shall be paid over into the General Fund of the State Treasury.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

HISTORY: Laws, 1985, ch. 381, § 16; Laws, 2016, ch. 459, § 43, eff from and after July 1, 2016.

Editor's Notes — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Cross References — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 7-9-23. Custodian of specified trust funds.

The State Treasurer is designated as sole agent to receive on State Fiscal Officer's pay warrant and disburse any and all funds received from sources other than those designated by law on State Fiscal Officer's warrant, which funds are to be expended under the direction and supervision of state officials or agencies for the benefit of the state. The State Treasurer is authorized and directed to receive on State Fiscal Officer's pay warrant any and all funds above specified and to be credited, each fund to a trust account for which the donor intends it. The special trust account shall designate for what purpose it is donated, and the State Fiscal Officer's books and Treasurer's books shall carry it as such. All funds shall be paid out on requisition signed by the proper agent or agents, properly supported by itemized vouchers, designated so to do on a warrant issued by the State Fiscal Officer upon the State Treasurer. Funds intended to be controlled by this section are those coming from the federal government, foundations and individuals to be expended for educational purposes, roads, agriculture, for making economic or social surveys, and for similar purposes. In no way shall this section interfere with or prevent the purpose of the donor. The state agent or official best fitted or qualified to direct the expenditure of a fund for a specified purpose or the official designated by the donor shall expend the funds, and is hereby given authority in the manner outlined herein.

HISTORY: Codes, 1930, § 7181; 1942, § 4310; Laws, 1930, ch. 95; Laws, 1984, ch. 488, § 130; Laws, 1989, ch. 532, § 41, eff from and after July 1, 1989.

Editor's Notes — Laws, 1984, ch. 488, § 341, provides:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — State treasurer as custodian of funds for state department of education, see § 37-3-39.

State treasurer as custodian of vocational rehabilitation funds, see § 37-33-31.

JUDICIAL DECISIONS

1. In general.

Under a former statute it was held that three state educational institutions to which the residue of a testator's estate had been bequeathed in equal parts were entitled to share in the residuary estate, which included the proceeds from the sale of real estate, since the Constitution and the statute, which provided in effect that every bequest of any money directed to be raised by sale of land to any body politic in trust for the purpose of being appropriated to charitable purposes should be void, were inapplicable to devises or bequests to the state. Coleman v. Whipple, 191 Miss. 287, 2 So. 2d 566, 1941 Miss. LEXIS 140 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Funds §§ 2 et seq.

§ 7-9-24. Refunds to state agencies for excess public utility charges.

Any refund to an agency of the State of Mississippi other than an agency financed entirely by federal funds for excess charges made by a public utility pursuant to rates in effect under bond filed with the Public Service Commission shall be forwarded, forthwith, by the administrative head of such state agency to the State Treasurer for deposit into a special account in the State Treasury to be expended as provided by the Legislature at the 1986 Regular Session.

HISTORY: Laws, 1985, ch. 515, § 1, eff from and after passage (approved April 16, 1985).

§ 7-9-25. Depository for federal-aid road funds.

All funds and the interest accruing thereon paid into the state treasury, either by the federal government, by any of the counties of the state, or by any road district in the state, for the purpose of constructing what is known as federal-aid highways shall be handled by the state treasury as a special deposit for such purpose. It shall be the duty of the state treasurer immediately upon receipt of such funds to give notice to all banks located in the county in which said funds are to be expended of the fact that such funds are on hand, and that he is ready to receive such proposals as any of them may make for the privilege of keeping such funds until the same are expended in the construction of such highways. The said state treasurer shall deposit said funds with the bank or banks located in the county where same is to be expended, proposing the best terms, having in view the safety of such funds. Security shall be required of like character and amount as provided for in the chapter on depositories, but the amount of such highway funds shall not be included in arriving at 35% limit. Each bank shall be entitled to receive this special highway deposit in addition to the 35% provided for by said chapter.

HISTORY: Codes, 1930, § 7171; 1942, § 4300; Laws, 1924, ch. 281.

Cross References — State treasurer's duties as member of state depository commission, see § 27-105-1.

§ 7-9-27. Investment of special fund to refund overpayment of income taxes.

The treasurer of the state of Mississippi shall invest the moneys deposited in the special fund to refund the overpayment of income taxes under the provisions of Section 27-7-313. The amounts to be invested shall be determined by the treasurer and shall be in the approximate amount of the total moneys deposited in said special fund less the anticipated refunds to be made within the following ninety-day period. Such funds shall be invested by said treasurer in short-term bonds, treasury bills, or other direct obligations of the United States of America, or any national or state banks in the state of Mississippi.

HISTORY: Codes, 1942, § 4310.5; Laws, 1968, ch. 521, § 1, eff from and after passage (approved August 6, 1968).

§ 7-9-29. Payment of interest and bonds.

It shall be the duty of the State Treasurer, two (2) weeks before any state bonds or interest coupons become due and payable, to make application to the State Fiscal Officer for his warrant in favor of the State Treasurer, specifying the bond issue and the total amount each of interest and bonds to be paid and when and where due and payable, according to the terms of the bonds. Upon presentation of such application, the State Fiscal Officer shall issue his warrant in favor of the State Treasurer according to said application.

HISTORY: Codes, 1930, § 7172; 1942, § 4301; Laws, 1928, Ex. ch. 94; Laws, 1984, ch. 488, § 131; Laws, 1989, ch. 532, § 42, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Laws of 2005, 2nd Ex Sess, ch. 31, § 4 provides as follows:

"SECTION 4. Through June 30, 2006, the State Treasurer may transfer from any funds in the State Treasury an amount to pay the principal of and the interest on state general obligation bonds as they become due."

§ 7-9-31. Cancellation of bonds and interest coupons.

The state treasurer shall, as soon as he receives such warrant, deposit the amount thereof in the bank or banks where, according to the terms of the bonds, the interest and bonds are to be paid for, or in some state depository for delivery to such bank or banks. He shall keep an account with each such bank or banks where such deposit has been made, charging it with such deposit and crediting it with the amounts of the bonds and interest coupons as the same are delivered to the state treasurer in his office.

The state bond commission shall provide for the method of acceptance and cancellation of bonds and interest coupons duly paid by requiring the paying agent or agents:

(a) To deliver bonds and coupons duly paid and cancelled to the state treasurer; or

(b) To furnish to the state treasurer, at the end of each month in which bonds and interest coupons of a given bond issue have been presented for payment and have been paid, a statement which shall contain a certified list of bonds and coupons duly paid and cancelled, showing for each issue the bond and coupon numbers, the amounts, the dates due, dates paid and such additional information as the state bond commission shall require along with the bonds and coupons paid.

Bonds and interest coupons duly paid shall be properly entered in a bond and interest register of the bond issue to which they belong in the state treasurer's office, and the treasurer shall accept as cancelled those duly paid and cancelled and so delivered by the paying agent or agents.

Any certified list submitted by the paying agent or agents as to payment and cancellation of bonds and interest coupons shall be accepted as conclusive as to payment and cancellation, and such paying agent or agents shall accept responsibility for proper payment and disposition of all bonds and coupons, and for any duplicate payments, payments to unauthorized persons and nonpayment to authorized persons occurring as a result of cancellation or destruction of bonds and coupons.

HISTORY: Codes, 1930, § 7173; 1942, § 4302; Laws, 1928, Ex. ch. 94; Laws, 1982, ch. 376, § 1, eff from and after July 1, 1982.

§ 7-9-32. Destruction of paid state warrants.

The state treasurer is hereby authorized to destroy all state warrants on which payment has been made according to approved records control schedules. No such records, however, may be destroyed without the approval of the director of the department of archives and history.

HISTORY: Laws, 1974, ch. 410; Laws, 1981, ch. 501, § 18, eff from and after July 1, 1981.

Cross References — Archives and Records Management Law, generally, see §§ 25-59-1 et seq.

Requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

§ 7-9-33. Receipted lists of cancelled bonds and coupons.

The State Fiscal Officer shall charge the State Treasurer with the amount of each warrant so issued as herein required. The State Treasurer shall prepare duplicate lists of bonds and coupons paid, cancelled and delivered to the Treasurer's office and submit the lists to the State Fiscal Officer, who shall sign a receipt on the lists, with seal affixed, for the bonds and interest coupons so cancelled as paid, shall present one (1) of these receipted lists to the State Treasurer (which shall be filed as his voucher for credit), and shall file the other receipted list in the State Fiscal Officer's office.

HISTORY: Codes, 1930, § 7174; 1942, § 4303; Laws, 1928, Ex. ch. 94; Laws, 1982, ch. 376, § 2; Laws, 1984, ch. 488, § 132; Laws, 1989, ch. 532, § 43, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-9-34. Destruction of paid and cancelled bonds and coupons.

The state treasurer is authorized to destroy any bonds and coupons of the State of Mississippi duly paid and cancelled not earlier than one (1) year after the same are surrendered for payment. A certificate containing a description of such bonds and coupons so destroyed, duly witnessed and signed by the treasurer or his deputy and the state fiscal officer, shall be kept on file in the treasurer's office.

HISTORY: Laws, 1982, ch. 376, § 3 (1st ¶); Laws, 1984, ch. 488, § 133, eff from and after October 1, 1986 (see Editor's Note below).

Editor's Notes — Laws, 1984, ch. 488, § 343, provided that the amendment to this section as proposed by Section 133, was to become effective July 1, 1986. Subsequently, Section 13, ch. 455, Laws, 1985, amended Section 343, ch. 488, Laws, 1984, to provide that the amendment was not to become effective until October 1, 1986.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Destruction of paid and cancelled bonds and coupons by paying agent for state bonds, see § 31-17-61.

§ 7-9-35. Unexpended balances of appropriations.

Within ten (10) days after the appropriation (out of which said warrant shall have been drawn) expires under Section 64 of the State Constitution, the State Treasurer shall withdraw the unexpended balance or balances in such bank or banks and shall turn said money back into the general funds of the State Treasury. He shall give such bank or banks credit for such returned balance or balances. The State Fiscal Officer shall, upon such payment back into the general fund, credit the State Treasurer on its account for such warrant.

HISTORY: Codes, 1930, § 7176; 1942, § 4305; Laws, 1928, Ex. ch. 94; Laws, 1984, ch. 488, § 134; Laws, 1989, ch. 532, § 44, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-9-37. Payment by depositories; meaning of "treasurer's check" for purpose of implementation of electronic funds transfer.

All state deposits in any depository in the State of Mississippi shall be subject to payment when demanded by the State Treasurer on his Treasurer's check drawn on the bank for such deposit in payment of a warrant or warrants issued by the State Fiscal Officer, or in the transfer of such deposit or any part thereof from one bank to another or other banks or to the State Treasury, in keeping the funds of the state equitably distributed among the state depositories as required by law, and for any other purposes necessary to carry out the provisions of law or to provide for equitable distribution of funds or payment of warrants when drawn by the State Fiscal Officer.

For the purpose of the implementation of Section 7-9-14, the term "Treasurer's check" as used in this section shall mean either a paper check or a paperless entry on an electronic data processing medium at a state depository that substitutes for a paper check for the purpose of debiting or crediting an account and for which a permanent record is made.

HISTORY: Codes, 1930, § 7177; 1942, § 4306; Laws, 1928, Ex. ch. 94; Laws, 1983, ch. 355, § 4; Laws, 1984, ch. 488, § 135; Laws, 1989, ch. 532, § 45, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Failure of depository to pay lawful state treasurer's check, see § 27-105-25.

OPINIONS OF THE ATTORNEY GENERAL

State Treasurer has authority to transfer public funds by wire, direct deposit or electronic transfer; this authority would include direct deposit of payroll of employees, and authority to delay issuance of payroll warrants would not be affected if Treasurer adopted direct deposit procedure. Ranck, Oct. 21, 1992, A.G. Op. #92-0810.

§ 7-9-39. Funds impounded.

In the event the funds coming into the state treasury are insufficient to pay all claims and debts of the state as they mature or become due, the state treasurer is hereby authorized and directed to impound or set aside sufficient funds to pay the bonds, short term notes, certificates of indebtedness, and interest coupons as they severally mature and become due.

HISTORY: Codes, 1942, § 4312; Laws, 1934, ch. 169.

§ 7-9-41. Lump-sum withdrawals from treasury.

(1) All support and maintenance funds appropriated for the operating expenses of all departments, institutions, agencies, boards and commissions, supported wholly or in part by the state, shall be drawn from the State Treasury only upon the issuance of individual warrants by the State Fiscal Officer in direct payment for goods sold or services performed, except where specifically provided otherwise in these statutes. The said State Fiscal Officer shall issue his warrants only upon requisitions signed by the proper person, officer or officers.

(2) In the case of the state institutions of higher learning, meeting with the written approval of the State Fiscal Officer, such funds may be drawn from the Treasury in the manner prescribed hereinbelow, and when such system of withdrawal is approved by the State Fiscal Officer, it shall not be changed except on the approval of both said parties.

The executive heads, together with the secretary or other person in charge of the books and accounts, of the state institutions of higher learning, if they receive such written approval, shall make up, in the form prescribed by the State Fiscal Officer and the State Treasurer, checklists of all salaries, accounts, bills, contracts and claims which shall have accrued during the month. Based upon such statement and in company with it, the state institutions of higher learning, through their proper officers, shall make requisition upon the State Fiscal Officer for only so much money as shall then be needed to pay salaries, accounts, bills, contracts and claims which may then be due, together with a reasonable amount for contingent expenses.

Such requisitions may be drawn upon the State Fiscal Officer's accounts, who shall draw its warrants on the Treasurer from time to time as required, payable to the official depository provided in Section 7-9-43. In the case of special appropriations made for buildings and permanent improvements, repairs, furniture, fixtures, and special supplies, and in all cases where it is not practicable to furnish a detailed statement, such funds may be drawn in installments at such times and in such amounts as necessity may require, and the requisitions for same must be accompanied by a general statement of the proposed purchases and expenditures.

In all cases where such lump-sum payments are authorized and paid as provided in this section, the proper officer or officers of the state institutions of higher learning shall make such additional reports to the State Fiscal Officer in the manner and at such times as he may require. Such reports shall also include other funds coming into the possession of or for the use and benefit of the state institutions of higher learning, whether such funds are regularly handled through the State Treasury or not.

(3) In the case of the State Department of Public Welfare, lump-sum withdrawals may only be made as provided for in subsection (2) of this section for payments to recipients of services provided by the department.

HISTORY: Codes, 1930, § 7178; 1942, § 4307; Laws, 1926, ch. 169; Laws, 1960, ch. 400; Laws, 1962, ch. 499, § 1; Laws, 1979, ch. 468, § 1; Laws, 1984, ch. 488, § 136; Laws, 1989, ch. 532, § 46, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Section 43-1-1 provides that the term "State Department of Public Welfare" or "State Board of Public Welfare" shall mean the Department of Human Services.

Cross References — Form of requisitions, see § 7-7-29.

Exception from requisition and request for payment requirements where requirements of this section are met, see § 7-7-29.

Issuance of warrants for payment of construction contracts, see § 7-7-41.

Expenditures from junior college vocational and technical training fund, see § 37-29-165.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Funds §§ 2 et seq.

§ 7-9-43. Contracts with selected depositories.

The state institutions of higher learning and the Department of Human Services, after receiving the written approval of the State Fiscal Officer as provided in Section 7-9-41, shall select and make a contract with some bank to serve as a depository for funds of the same. Said bank so selected shall qualify to receive said fund and secure the same as required of state depositories under Section 27-105-5 before receiving any funds, except as herein noted in the case of private hospitals. The life of said contract with a depository shall be for five (5) years. Each bank shall enter into a written contract, the terms of which shall be to perform faithfully all acts and duties required of it by this and other laws of the state. As such depository, it shall receive and keep account of all funds and pay out same on the check of the secretary or business manager, countersigned by the president or chairman of the board or institution. Such bank shall receive, keep, disburse and account for all funds of the Department of Human Services and such state institution of higher learning for which it shall be a depository, and turn over all funds and accounts to its legal successor, provided all private hospitals shall be exempted from providing depositories.

All books, accounts and reports made thereon for any funds shall conform to the requirements of the General Accounting Office, and shall be filed with the said General Accounting Office.

HISTORY: Codes, 1930, § 7179; 1942, § 4308; Laws, 1926, ch. 169; Laws, 1962, ch. 499, § 2; Laws, 1979, ch. 468, § 2; Laws, 1984, ch. 488, § 137; Laws, 1989, ch. 532, § 47; Laws, 2011, ch. 382, § 1, eff from and after July 1, 2011.

Editor's Notes — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Exception from requisition and request for payment requirements where requirements of this section are met, see § 7-7-29.

Form of requisitions, see § 7-7-29.

Issuance of warrants for payment of construction contracts, see § 7-7-41.

Establishment of state depositories, see § 27-105-1.

Special fund of state board of cosmetology, see § 73-7-5.

JUDICIAL DECISIONS

1. In general.

Members of the board of barber examiners are state officers, and their offices are state offices, and therefore the state auditor had the right to maintain suit upon the bond of the secretary of the board for the alleged misapplication of funds of the board. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215, 1941 Miss. LEXIS 177 (Miss. 1941).

In an action by the state auditor on the bond of the secretary of the board of barber examiners, for misapplication of funds, it was immaterial whether the secretary was a member of the board, since in any event he would be either a public officer or employee. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215, 1941 Miss. LEXIS 177 (Miss. 1941).

The board of barber examiners exercises part of the sovereignty of the state, and so is not a private body, with any independent control over its funds or with any private rights therein. Causey v. Phillips, 191 Miss. 891, 4 So. 2d 215, 1941 Miss. LEXIS 177 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Funds §§ 8, 10, 11, .

§ 7-9-45. Monthly verification with auditor.

The State Treasurer and the State Fiscal Officer shall, on or before the tenth day of each month, check, verify and reconcile the list of the receipts into the Treasury for the previous month, according to the warrants on which they are founded, and in whose name the several receipts have been given, and their respective dates, amounts and numbers.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (10); 1857, ch. 6, art. 59; 1871, § 159; 1880, § 246; 1892, § 4212; 1906, § 4760; Hemingway's 1917, § 7887; 1930, § 7170; 1942, § 4299; Laws, 1984, ch. 488, § 138; Laws, 1989, ch. 532, § 48, eff from and after July 1, 1989.

Editor's Notes — Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 7-9-47. Reports to the legislature.

The state treasurer shall make to the legislature, at the commencement of each regular, not extraordinary, session, a detailed report of the receipts and expenditures since his last report. He shall present to it the report required of him by Section 115 of the Constitution and, in case of a deficiency of revenue, he shall suggest such increase of taxes as he may consider best suited to supply the deficiency. He shall also make to the legislature, or to either house thereof, such supplemental reports as may be called for.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (6); 1857, ch. 6, art. 57; 1871, § 157; 1880, § 244; 1892, § 4210; 1906, § 4758; Hemingway's 1917, § 7885; 1930, § 7166; 1942, § 4295.

§ 7-9-49. Reports to governor.

The state treasurer shall furnish to the governor, from time to time when required, a full and complete statement, in tabular form, of the situation of the public finances and full information touching the condition and proceedings of his office. The books of the treasurer shall, at all seasonable times, be open to the inspection of the governor and of the auditor, and the governor shall at all times be permitted to examine and count the money on hand.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (9); 1857, ch. 6, art. 58; 1871, § 158; 1880, § 245; 1892, § 4211; 1906, § 4759; Hemingway's 1917, § 7886; 1930, § 7167; 1942, § 4296.

Cross References — Governor's duty to count money in treasury, see § 7-1-43.

§ 7-9-51. Suit on bond for embezzlement.

If the state treasurer shall misapply, waste, or embezzle any money, stock, securities, or other property in the treasury, it shall be the duty of the attorney general to bring suit on the bond of such treasurer, in the circuit court of the county where the seat of government is situated, for the amount of money, stock, securities, or other property so misapplied, wasted, or embezzled. If a judgment be rendered for the plaintiff, the defendant shall pay double the damages assessed, not exceeding the penalty of the bond.

HISTORY: Codes, Hutchinson's 1848, ch. 20, art. 4 (8); 1857, ch. 6, art. 60; 1871, § 160; 1880, § 247; 1892, § 4213; 1906, § 4761; Hemingway's 1917, § 7888; 1930, § 7168; 1942, § 4297.

Cross References — Governor requiring court proceedings against defaulting treasurer or tax collector, see § 7-1-59.

Crimes of embezzlement committed by public officers, see §§ 97-11-25 et seq.

Additional penalties on certain officers for gambling, see § 97-33-3.

RESEARCH REFERENCES

ALR.

Standard of proof as to conduct underlying punitive damage awards-modern status. 58 A.L.R.4th 878.

§ 7-9-53. Preservation of records.

The state treasurer shall safely keep and preserve all moneys, securities, books, records, papers, and other things belonging to his office without waste, embezzlement, or misapplication thereof; and at the expiration of his term, he shall deliver the same to his successor.

HISTORY: Codes, 1857, ch. 6, art. 61; 1871, § 161; 1880, § 248; 1892, § 4214; 1906, § 4762; Hemingway's 1917, § 7889; 1930, § 7169; 1942, § 4298.

Cross References — Crime of making false entries or alterations of entries in books of public office, see § 97-21-1.

SPECIAL TREASURY FUND

Sec.
7-9-55 through 7-9-61. Repealed.
7-9-63. Repealed.
7-9-64. Repealed.
7-9-65 through 7-9-69. Repealed.
7-9-70. Mississippi Fire Fighters Memorial Burn Center Fund established; deposits; investments; Mississippi Burn Care Fund.

§§ 7-9-55 through 7-9-61. Repealed.

Repealed by Laws, 1985, ch. 419, § 4, eff from and after November 4, 1986, the date upon which the electorate ratified the addition of Section 206A to the Mississippi Constitution of 1890 which was proposed by Laws, 1985, ch. 546.

§ 7-9-55. [En Laws, 1982, ch. 495, § 1]
§ 7-9-57. [En Laws, 1982, ch. 495, § 2]
§ 7-9-59. [En Laws, 1982, ch. 495, § 3; Am 1984, ch. 488, § 164]
§ 7-9-61. [En Laws, 1982, ch. 495, § 4]

Editor's Notes — Former § 7-9-55 created a special fund in the state treasury.

Former § 7-9-57 related to the principal of a special fund as additional security for state bonds.

Former § 7-9-59 authorized investments for a special fund.

Former § 7-9-61 authorized expenditures from a special fund.

§ 7-9-63. Repealed.

Repealed by Laws, 1995, ch. 622, § 23, eff from and after July 1, 1995.

§ 7-9-63. [Laws, 1984, ch. 488, § 286; Laws, 1985, ch. 525, § 12]

Editor's Notes — Former § 7-9-63 was entitled: Systems policy and planning revolving fund.

§ 7-9-64. Repealed.

Repealed by Laws, 1992, ch. 419, § 33, eff from and after July 1, 1992, and by Laws, 1993, ch. 509, § 6, eff from and after July 1, 1993.

§ 7-9-64. [Laws, 1988, ch. 487, § 13; Laws, 1992, ch. 484, § 6]

Editor's Notes — Laws, 1992, ch. 419, was vetoed by the Governor on May 3, 1992. The veto was overridden by the State Senate and House of Representatives on May 4, 1992.

Laws of 1992, ch. 419, § 34, effective from and after July 1, 1992, provides as follows:

"SECTION 34. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income, sales and use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income, sales and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Former § 7-9-64 created the Education Reserve Fund.

§§ 7-9-65 through 7-9-69. Repealed.

Repealed from and after November 4, 1986, the date upon which the electorate ratified the addition of Section 206A to the Mississippi Constitution of 1890 which was proposed by Laws, 1985, ch. 546.

§§ 7-9-65 through 7-9-69. [En Laws, 1986, ch. 436, §§ 1-3]

Editor's Notes — Former § 7-9-65 concerned the deposit of revenue derived from oil, gas and other mineral resources under federally-owned lands or severed federally owned minerals.

Former § 7-9-67 related to the deposit of revenue derived from oil, gas and other mineral resources received pursuant to the Federal Outer Continental Shelf Lands Act.

Former § 7-9-69 related to deposit of revenue derived from oil, gas and other mineral resources under federally-owned lands or from severed federally-owned minerals into trust fund for improvement of education.

§ 7-9-70. Mississippi Fire Fighters Memorial Burn Center Fund established; deposits; investments; Mississippi Burn Care Fund.

(1) There is created and established in the State Treasury a special trust fund to be known as the "Mississippi Fire Fighters Memorial Burn Center Fund." There shall be deposited in such fund (a) all such fees as the State Treasurer is directed to deposit therein under subsection (4) of Section 27-19-56.1, under subsection (4) of Section 27-19-56.2 and under subsection (5)(b) of Section 27-19-56.4; and (b) any gift, donation, bequest, trust, grant, endowment, transfer of money or securities or any other monies from any source whatsoever as may be designated for deposit in the fund.

(2) The principal of the trust fund created under subsection (1) of this section shall remain inviolate and shall be invested as provided by law. Interest and income derived from investment of the principal of the trust fund may be appropriated by the Legislature and expended exclusively for the support and maintenance of the Mississippi Fire Fighters Memorial Burn Center.

(3) From and after June 17, 2005, there shall be created in the State Treasury a fund known as the Mississippi Burn Care Fund. The Mississippi Burn Care Fund shall be the Mississippi Fire Fighters Memorial Burn Center Fund and any reference to the Mississippi Fire Fighters Memorial Burn Center Fund in law shall mean the Mississippi Burn Care Fund. All funds payable to the Mississippi Fire Fighters Memorial Burn Center Fund shall, from and after June 17, 2005, be paid to the Mississippi Burn Care Fund. All balances in the Mississippi Fire Fighters Memorial Burn Center Fund and the Mississippi Fire Fighters Memorial Fire Fighters Burn Center Escrow Fund shall be transferred to the Mississippi Burn Care Fund on June 17, 2005. All interest earned by funds in the Mississippi Burn Care Fund shall be credited to the fund and not the General Fund. For fiscal year 2006, and for each fiscal year thereafter, the Legislature may appropriate interest, income or other funds credited to the Mississippi Burn Care Fund, and there shall be no requirement that the monies deposited to the fund be held inviolate in trust. Any appropriation of funds from the Mississippi Burn Care Fund shall be to the Mississippi Department of Health for the purpose of carrying out its responsibilities established in Section 41-59-5; however, after the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, any appropriation of funds from the Mississippi Burn Care Fund shall be to the University of Mississippi Medical Center for the operation of the Mississippi Burn Center. The Mississippi Burn Care Fund shall be authorized to accept gifts, donations, bequests, appropriations or other grants from any source, governmental or private, for deposit into the

fund. The Department of Health, or the University of Mississippi Medical Center after the Mississippi Burn Center is operational, shall be the agency responsible for receiving any such gifts, donations, bequests, appropriations or grants and shall deposit such to the Mississippi Burn Care Fund.

HISTORY: Laws, 1992, ch. 501, § 1; Laws, 2005, 2nd Ex Sess, ch. 47, § 1; Laws, 2007, ch. 569, § 2, eff from and after July 1, 2007.

Editor's Notes — Laws of 1992, ch. 501, § 11, effective from and after October 1, 1992, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws or the motor vehicle ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the highway privilege tax laws and the motor vehicle ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Authorization of county and municipal donations to the Mississippi Fire Fighters Memorial Burn Center, see § 21-19-58.

Donations of compensation received by jurors, see § 25-7-61.

Contribution to Mississippi Fire Fighters Memorial Burn Center Fund from state income tax refund, see § 27-7-88.

Allocation of portion of money collected for special license tags containing public university emblems to the Mississippi Fire Fighters Memorial Burn Center Fund, see § 27-19-56.4.

Appropriation and expenditure of money from county general fund to support the Mississippi Fire Fighters Memorial Burn Center, see § 27-39-331.

Levying of tax by county to support the Mississippi Fire Fighters Memorial Burn Center, see § 27-39-332.

STATE BOND SUPERVISORY DIVISION [REPEALED]

Sec.
7-9-71 through 7-9-73. Repealed.

§§ 7-9-71 and 7-9-73. Repealed.

Repealed by Laws, 1974, ch. 565, § 3, eff March 21, 1976.
§§ 7-9-71 and 7-9-73 [En Laws, 1974, ch. 565, §§ 1, 2]

Editor's Notes — Former § 7-9-71 created the state bond supervisory division in the state treasurer's office and provided for a director and staff and the director's fidelity bond.

Former § 7-9-73 fixed the powers and duties of the division.

EDUCATION IMPROVEMENT TRUST FUND

Sec.
7-9-101. Authorization to employ or enter into contract with investment advisors, security custodians, and/or bank trust departments.

Sec.
7-9-103. Authorized investments for principal of Education Improvement Trust Fund; powers of investment entity.
7-9-105. Power to adopt rules and regulations.
7-9-107. Transfer of funds.

§ 7-9-101. Authorization to employ or enter into contract with investment advisors, security custodians, and/or bank trust departments.

The State Treasurer is hereby authorized and empowered to employ or enter into a contract for the services of investment advisors, security custodians and/or bank trust departments for the management and investment of the Education Improvement Trust Fund created in Section 206A of the Mississippi Constitution of 1890. Compensation or fees for such services shall be paid from the income derived from investment of the principal of the trust fund, subject to appropriation by the Legislature.

HISTORY: Laws, 1988, ch. 320, § 1, eff from and after July 1, 1988.

§ 7-9-103. Authorized investments for principal of Education Improvement Trust Fund; powers of investment entity.

The principal of the Education Improvement Trust Fund shall be invested by the investment entity so selected by the State Treasurer, and all purchases shall be made from competitive offerings. Such funds may be invested only as follows:

(a) Bonds, notes, certificates and other valid general obligations of the State of Mississippi, or of any county, or of any city, or of any supervisors district of any county of the State of Mississippi, or of any school district bonds of the State of Mississippi; notes or certificates of indebtedness issued by the Veterans' Home Purchase Board of Mississippi, provided such notes or certificates of indebtedness are secured by the pledge of collateral equal to two hundred percent (200%) of the amount of the loan, which collateral is also guaranteed at least for fifty percent (50%) of the face value by the United States Government, and provided that not more than five percent (5%) of the total investment holdings of the system shall be in Veterans' Home Purchase Board notes or certificates at any time; real estate mortgage loans one hundred percent (100%) insured by the Federal Housing Administration on single family homes located in the State of Mississippi, where monthly collections and all servicing matters are handled by the Federal Housing Administration approved mortgagees authorized to make such loans in the State of Mississippi;

(b) State of Mississippi highway bonds;

(c) Funds may be deposited in federally insured institutions domiciled in the State of Mississippi;

(d) Corporate bonds of Grade A or better as rated by Standard and Poor or by Moody's Investment Service; or corporate short-term obligations of corporations, or of wholly-owned subsidiaries of corporations, whose short term obligations are rated S-3 or better by Standard and Poor or rated P-3 or better by Moody's Investment Service;

(e) Bonds of the Tennessee Valley Authority;

(f) Bonds, notes, certificates and other valid obligations of the United States, and other valid obligations of any federal instrumentality that issues securities under authority of an act of Congress and are exempt from registration with the Securities and Exchange Commission;

(g) Bonds, notes, debentures and other securities issued by any federal instrumentality and fully guaranteed by the United States;

(h) Interest-bearing bonds or notes which are general obligations of any other state in the United States or of any city or county therein, provided such city or county had a population as shown by the federal census next preceding such investment of not less than twenty-five thousand (25,000) inhabitants, and provided that such state, city or county has not defaulted for a period longer than thirty (30) days in the payment of principal or interest on any of its general obligation indebtedness during a period of ten (10) calendar years immediately preceding such investment;

(i) Certificates of deposit and repurchase agreements. All investments shall be acquired by the investment entity at the highest market rate available for such securities; and

(j) Securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions of 15 USCS Section 80a-1 et seq. provided that the portfolio of such investment company or investment trust is limited to direct obligations issued by the United States of America, United States Government agencies, United States Government instrumentalities or United States Government sponsored enterprises, and to repurchase agreements fully collateralized by direct obligations of the United States of America, United States Government agencies, United States Government instrumentalities or United States Government sponsored enterprises, and the investment company or investment trust takes delivery of such collateral for the repurchase agreement, either directly or through an authorized custodian. The State Treasurer and the Executive Director of the Department of Finance and Administration shall review and approve the investment companies and investment trusts in which funds invested under this paragraph (j) may be invested. However, at no time shall the funds invested in investment companies and investment trusts under this paragraph (j) exceed twenty percent (20%) of all investments of the Education Improvement Trust Fund under this section.

Any limitations herein set forth shall be applicable only at the time of purchase and shall not require the liquidation of any investment at any time.

Subject to the above terms, conditions, limitations and restrictions, the investment entity shall have power to sell, assign, transfer and dispose of any of the securities and investments of the trust fund.

HISTORY: Laws, 1988, ch. 320, § 2, eff from and after July 1, 1988; Laws, 1995, ch, 321, § 3, eff from and after July 1, 1995.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a federal statutory reference in paragraph (j) by substituting "15 USCS, Section 80a-1 et seq." for "15 USCS, Section 80(a)-1 et seq." The Joint Committee ratified the correction at its August 12, 2019, meeting.

Editor's Notes — The Iran Divestment Act of 2015 (Sections 27-106-1 through 27-106-25) prohibits the Public Employees' Retirement System and the State Treasurer from investing funds with a person engaging in certain investment activities in Iran.

The Israel Support Act of 2019 (Sections 27-117-1 through 27-117-15) prohibits the Public Employees' Retirement System and the State Treasurer from investing funds with a company that is identified as engaging in a boycott of Israel.

Cross References — Investment of excess funds from the Working Cash-Stabilization Reserve Fund in securities as authorized by this section, see § 27-103-203.

Federal Aspects— The reference in (j) to 15 USCS, § 80(a)-1 et seq., is commonly referred to as the Investment Company Act.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 7-9-103(d), Student Loan Marketing Associations (SLMAs) are permissible investments under Education Improvement Trust Fund. Bennett, Apr. 7, 1993, A.G. Op. #93-0192.

§ 7-9-105. Power to adopt rules and regulations.

The State Treasurer is authorized and empowered to adopt necessary rules and regulations consistent with this legislation to facilitate the management of said education trust funds.

HISTORY: Laws, 1988, ch. 320, § 3, eff from and after July 1, 1988.

§ 7-9-107. Transfer of funds.

Upon request of the investment entity, signed by the proper person, officer or officers, the State Fiscal Management Board shall issue its warrants to authorize the transfer from the Education Improvement Trust Fund created in Section 206A of the Mississippi Constitution of 1890 such funds as are selected for investment pursuant to Sections 7-9-101 through 7-9-107, and upon receipt of such warrants the State Treasurer shall immediately transfer such sums to the proper funds or accounts.

HISTORY: Laws, 1988, ch. 320, § 4, eff from and after July 1, 1988.

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

CAPITAL IMPROVEMENTS PREPLANNING FUND

Sec.
7-9-151 through 7-9-159. Repealed.

Sec.
7-9-161. Repeal of §§ 7-9-151 through 7-9-159.

§§ 7-9-151 through 7-9-159. Repealed.

Repealed by Laws, 2011, ch. 400, § 6, effective July 1, 2014.

§ 7-9-151. [Laws, 1994, ch. 529, § 1; Laws, 2000, ch. 531, § 1; reenacted without change, Laws, 2003, ch. 375, § 1; reenacted without change, Laws, 2004, ch. 474, § 1; reenacted without change, Laws, 2006, ch. 410, § 1; Laws, 2008, ch. 408, § 1; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 1; reenacted without change, Laws, 2011, ch. 400, § 1, eff from and after July 1, 2011.]

§ 7-9-153. [Laws, 1994, ch. 529, § 2; Laws, 2000, ch. 531, § 2; reenacted without change, Laws, 2003, ch. 375, § 2; reenacted without change, Laws, 2004, ch. 474, § 2; reenacted without change, Laws, 2006, ch. 410, § 2; Laws, 2008, ch. 408, § 2; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 2; reenacted without change, Laws, 2011, ch. 400, § 2, eff from and after July 1, 2011.]

§ 7-9-155. [Laws, 1994, ch. 529, § 3; Laws, 2000, ch. 531, § 3; reenacted without change, Laws, 2003, ch. 375, § 3; reenacted without change, Laws, 2004, ch. 474, § 3; reenacted without change, Laws, 2006, ch. 410, § 3; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 3; reenacted without change, Laws, 2011, ch. 400, § 3, eff from and after July 1, 2011.]

§ 7-9-157. [Laws, 1994, ch. 529, § 4; reenacted without change, Laws, 2003, ch. 375, § 4; reenacted without change, Laws, 2004, ch. 474, § 4; reenacted without change, Laws, 2006, ch. 410, § 4; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 4; reenacted without change, Laws, 2011, ch. 400, § 4, eff from and after July 1, 2011.]

§ 7-9-159. [Laws, 1994, ch. 529, § 5; reenacted without change, Laws, 2003, ch. 375, § 5; reenacted without change, Laws, 2004, ch. 474, § 5; reenacted without change, Laws, 2006, ch. 410, § 5; reenacted without change, Laws, 2009, 2nd Ex Sess, ch. 22, § 5; reenacted without change, Laws, 2011, ch. 400, § 5, eff from and after July 1, 2011.]

Editor's Notes — Former § 7-9-151 established the Capital Improvements Preplanning Fund and provided the source of monies for and purposes of the fund.

Former § 7-9-153 pertained to payment of expenses for preplanning projects, preliminary studies and plans, warrants, requisitions and limits on the amount of warrants.

Former § 7-9-155 pertained to the repayment of preplanning funds received from the Capital Improvements Preplanning Fund.

Former § 7-9-157 authorized the Department of Finance and Administration to receive and expend source funds in connection with the expenditure of funds deposited into the Capital Improvements Preplanning Fund.

Former § 7-9-159 pertained to the transfer of funds in the Capital Improvements Preplanning Fund, created pursuant to Chapter 246, Laws of 1973, to the Capital Improvements Preplanning Fund created by Sections 7-9-151 through 7-9-159.

§ 7-9-161. Repeal of §§ 7-9-151 through 7-9-159.

Sections 7-9-151 through 7-9-159, Mississippi Code of 1972, shall be repealed on July 1, 2014.

HISTORY: Laws, 2000, ch. 531, § 4; Laws, 2003, ch. 375, § 6; Laws, 2004, ch. 474, § 6; Laws, 2006, ch. 410, § 6; Laws, 2009, 2nd Ex Sess, ch. 22, § 6; Laws, 2011, ch. 400, § 6, eff from and after July 1, 2011.

CHAPTER 11.

SECRETARY OF STATE; LAND RECORDS

Sec.
7-11-1. Repealed.
7-11-2. Abolition of office of State Land Commissioner; transferral of duties and responsibilities to Secretary of State.
7-11-3. Custodian of records of former land office.
7-11-4. "State land commissioner," "land commissioner," "state land office," "land office" to mean Secretary of State.
7-11-5. Repealed.
7-11-6. Assistant Secretary of State to perform functions of state land office; employment of additional personnel; transition of power by state land commissioner.
7-11-7. Repealed.
7-11-8. Functions assigned to Secretary of State to be merged and coordinated with those of former state land office.
7-11-9. Repealed.
7-11-11. Duties and powers of Secretary of State.
7-11-13. Land records.
7-11-15. Form of records.
7-11-17. Records preserved and bound.
7-11-19. Copies of records.
7-11-21. Repealed.
7-11-23. Repealed.
7-11-25. Report to legislature.

§ 7-11-1. Repealed.

Repealed by Laws, 1978, ch. 458, § 29, eff from and after January 1, 1980.

§ 7-11-1. [Codes, 1892, § 2566; 1906, § 2904; Hemingway's 1917, § 5239; 1930, § 6008; 1942, § 4067; Laws, 1910, ch. 197; Laws, 1936, ch. 174; Laws, 1938, Ex. ch. 30; Laws, 1942, ch. 236; Laws, 1944, ch. 222]

Editor's Notes — Former § 7-11-1 established the office of land commissioner.

§ 7-11-2. Abolition of office of State Land Commissioner; transferral of duties and responsibilities to Secretary of State.

The office of State Land Commissioner as heretofore existing is hereby abolished, and all the duties, responsibilities and title of said office are transferred to the office of Secretary of State, who shall perform the duties heretofore performed by the elected State Land Commissioner for the State of Mississippi.

HISTORY: Laws, 1978, ch. 458, § 1, eff from and after January 1, 1980.

Cross References — General duties of secretary of state, see § 7-3-5.

JUDICIAL DECISIONS

ANALYSIS

1.-5. [Reserved for future use.]
6. Under former § 7-11-1.

1.-5. [Reserved for future use.]

6. Under former § 7-11-1.

Employment of deputy land commissioner held to cease upon qualification of successor. State ex rel. Brown v. Christmas, 126 Miss. 358, 88 So. 881, 1921 Miss. LEXIS 44 (Miss. 1921).

§ 7-11-3. Custodian of records of former land office.

The Secretary of State shall have custody of the records of the surveyor general's office turned over to this state by the United States, all field notes, plats and maps of surveys of lands belonging to the old office of swamp land commissioner and all other papers, documents and records which were formerly kept in the land office. All such records now in the possession of any other officer shall be delivered to the secretary of state.

HISTORY: Codes, 1892, § 2558; 1906, § 2896; Hemingway's 1917, § 5231; 1930, § 6007; 1942, § 4066; Laws, 1948, ch. 492; Laws, 1978, ch. 458, § 8, eff from and after January 1, 1980.

Editor's Notes — Section 7-11-3 formerly established a land office for the deposit of records of the surveyor general's office, plats, survey maps and other related documents.

Cross References — Land office certificates received as evidence, see § 13-1-131.

Secretary of State as member of state mineral lease commission, see § 29-7-1.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 1 et seq.

§ 7-11-4. "State land commissioner," "land commissioner," "state land office," "land office" to mean Secretary of State.

The words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state wherever they appear in sections 3-5-11, 21-33-69, 21-37-49, 25-7-83, 27-3-43, 27-29-1, 27-35-65, 27-35-69, 27-39-319, 27-45-21, 29-1-1, 29-1-5, 29-1-7, 29-1-9, 29-1-13, 29-1-17, 29-1-21, 29-1-25, 29-1-27, 29-1-31, 29-1-33, 29-1-35, 29-1-37, 29-1-43, 29-1-49, 29-1-51, 29-1-53, 29-1-55, 29-1-57, 29-1-59, 29-1-61, 29-1-63, 29-1-65, 29-1-67, 29-1-69, 29-1-71, 29-1-77, 29-1-79, 29-1-83, 29-1-85, 29-1-87, 29-1-89, 29-1-91, 29-1-93, 29-1-95, 29-1-99, 29-1-101, 29-1-107, 29-1-111, 29-1-113, 29-1-115, 29-1-119, 29-1-123, 29-1-131, 29-1-133, 33-11-11, 49-5-1, 51-29-81, 51-29-85, 51-29-87, 51-33-43, 51-33-45, 51-35-159, 55-3-9, 55-7-13, 55-13-31, 59-9-21, 59-9-67, 89-11-3, 89-11-15, 89-11-19, 89-11-21, 89-11-27 and 89-11-29, Mississippi Code of 1972, or in any other place where they appear in the laws of this state.

HISTORY: Laws, 1978, ch. 458, § 27, eff from and after January 1, 1980.

Editor's Notes — Section 51-33-159, referred to in this section, was repealed by Laws, 1997, ch. 403, § 11, effective from and after July 1, 1997.

§ 7-11-5. Repealed.

Repealed by Laws, 1978, ch. 458, § 29, eff from and after January 1, 1980.
§ 7-11-5. [Codes, 1892, § 2559; 1906, § 2897; Hemingway's 1917, § 5232; 1930, § 6009; 1942, § 4068; Laws, 1896, ch. 50; Laws, 1964, ch. 542, § 3]

Editor's Notes — Former § 7-11-5 prescribed office hours for the land office.

§ 7-11-6. Assistant Secretary of State to perform functions of state land office; employment of additional personnel; transition of power by state land commissioner.

The Secretary of State shall appoint a competent attorney to be designated as an assistant secretary of state, who shall have the responsibilities of performing the function of the former state land office in addition to any other duties as assigned by the Secretary of State.

The secretary of state is empowered and authorized to employ such office assistants, clerical employees and field inspectors on either a temporary or permanent basis as shall be necessary to perform the former duties and functions of the state land office. The Assistant Secretary of State hereby created shall be in addition to any other assistant secretaries of state previously designated or heretofore authorized. The State Land Commissioner elected pursuant to Section 7-11-1 shall deliver the seal, all records, reports and other property of the state land office to the Secretary of State prior to the expiration of his term of office.

HISTORY: Laws, 1978, ch. 458, § 2; Laws, 1981, ch. 339, § 1, eff from and after July 1, 1981.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph. The word "secretary" was changed to "secretaries." The Joint Committee ratified the correction at its December 3, 1996 meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Editor's Notes — Section 7-11-1 referred to in this section was repealed by Laws, 1978, ch. 458, § 29, eff from and after January 1, 1980.

Section 7-11-4 provides that the words "State Land Commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

§ 7-11-7. Repealed.

Repealed by Laws, 1978, ch. 458, § 29, eff from and after January 1, 1980.

§ 7-11-7. [Codes 1892, § 2560; 1906, § 2898; Hemingway's 1917, § 5233; 1930, § 6010; 1942, § 4069]

Editor's Notes — Former § 7-11-7 provided for the seal of the land office.

§ 7-11-8. Functions assigned to Secretary of State to be merged and coordinated with those of former state land office.

It is the intent of the legislature that the functions assigned to the Secretary of State by this chapter shall be merged and coordinated with similar functions being exercised by the state land office on January 1, 1980.

HISTORY: Laws, 1978, ch. 458, § 3, eff from and after January 1, 1980.

Editor's Notes — Section 7-11-4 provides that the words "State Land Commissioner," "land commissioner," "state land office," and "land office" shall mean the Secretary of State.

§ 7-11-9. Repealed.

Repealed by Laws, 1978, ch. 458, § 29, eff from and after January 1, 1980.

§ 7-11-9. [Codes, 1892, § 2566; 1906, § 2904; Hemingway's 1917, § 5239; 1930, § 6008; 1942, § 4067; Laws, 1910, ch. 197; Laws, 1936, ch. 174; Laws, 1938, Ex. ch. 30; Laws, 1942, ch. 236; Laws, 1944, ch. 222]

Editor's Notes — Former § 7-11-9 provided for the employment of a deputy land commissioner and other land office personnel.

§ 7-11-11. Duties and powers of Secretary of State.

The Secretary of State shall have charge of the swamp and the overflowed lands and indemnity lands in lieu thereof, the internal improvement lands, the lands forfeited to the state for nonpayment of taxes after the time allowed by law for redemption shall have expired, and of all other public lands belonging to or under the control of the state. The regulation, sale and disposition of all such lands shall be made through the secretary of state's office.

The secretary of state shall sign all conveyances and leases of any and all state-owned lands and shall record same in a book kept in his office for such purposes.

HISTORY: Codes, 1892, §§ 2558, 2567; 1906, §§ 2896, 2905; Hemingway's 1917, §§ 5231, 5240; 1930, §§ 6007, 6011; 1942, §§ 4066, 4070, 4074; Laws, 1936, ch. 174; Laws, 1948, ch. 492; Laws, 1978, ch. 458, § 9, eff from and after January 1, 1980.

Cross References — Secretary of state's duties when state tax commission buys land resulting from judgment or decree, see § 27-3-43.

Secretary of State authorizing easements for pipe lines, see § 29-1-101.

Secretary of State as member of state mineral lease commission, see § 29-7-1.

Issuance of a certificate of need to the Mississippi Band of Choctaw Indians for construction of health care facilities, see § 41-7-191.

All state-owned public lands being declared forest reserves and wild life refuges, see § 49-5-1.

Powers of Tombigbee river valley water management district, see § 51-13-111.

Co-operation between state agencies concerning soil conservation on state-owned lands, see § 69-27-53.

Reporting of escheated land to land commissioner, see § 89-11-15.

Secretary of State beginning escheat proceedings, see § 89-11-29.

JUDICIAL DECISIONS

1. In general.

Motion to remand was granted because under Miss. Code Ann. §§ 7-11-11 and 29-3-1 it was without question that the Mississippi secretary of state and the public school district were necessary parties to the quiet title action that involved 16th section school lands. As such, complete diversity did not exist. Clark Techs., LLC v. Hood, 2009 U.S. Dist. LEXIS 75318 (S.D. Miss. Aug. 14, 2009).

Secretary of State had a clear interest in the property, and pursuant to Miss. Code Ann. § 7-11-11, which enumerated the duties and powers of the Secretary of State, the property was to come under the Secretary of State's charge once the redemption period was over, and this entitled the Secretary of State to be recognized in the eminent domain proceedings; if the Department of Finance and Administration had strictly followed the procedural requirements of § 11-27-7, it would have named the Secretary of State as a defendant. Smith v. Jackson State Univ., 995 So. 2d 88, 2008 Miss. LEXIS 454 (Miss. 2008).

Even though the estate retained a right of possession and redemption – the fee passed to the State of Mississippi on August 28, 2000, and the State became the owner of the land, and after the sale and during the time allowed for redemption, the State possessed an inchoate title to the land, and after the redemption period was over, the Secretary of State had charge of the lands forfeited to the state for nonpayment of taxes. Smith v. Jackson State Univ., 995 So. 2d 88, 2008 Miss. LEXIS 454 (Miss. 2008).

Despite the approval from the Mississippi Gaming Commission for a site for gaming, the Secretary of State's decision to deny the public trust tidelands lease was made within the discretion granted to him; the Secretary of State had the final decision-making authority concerning the proposed public trust tidelands lease, and the Secretary of State had the responsibility of preserving the public trust tidelands for the people of the State of Mississippi. Columbia Land Dev., LLC v. Sec'y of State, 868 So. 2d 1006, 2004 Miss. LEXIS 286 (Miss. 2004).

The policy of the state is to encourage the development of public utilities by affording them the right to place their lines along streets and highways. City Council of Greenville v. Thomas, 241 Miss. 633, 131 So. 2d 659, 1961 Miss. LEXIS 382 (Miss. 1961).

Where a statute granted the right to build and construct a pipeline across public lands, the phrase public lands includes sixteenth section school lands. Willmut Gas & Oil Co. v. Covington County, 221 Miss. 613, 71 So. 2d 184, 1954 Miss. LEXIS 569 (Miss. 1954).

The purpose which the legislature had in granting to public utilities the right to construct pipelines across sixteenth section lands is consistent with other analogous legislative grants. Willmut Gas & Oil Co. v. Covington County, 221 Miss. 613, 71 So. 2d 184, 1954 Miss. LEXIS 569 (Miss. 1954).

Sale of leasehold estate of sixteenth section lands to the state for nonpayment of taxes merged the unexpired term thereof in the greater fee simple title of the state and extinguished it, so that the state land commissioner was without power to sell such leasehold and issue a patent therefor, his power over such lands under this section [Code 1942, § 4070] being merely supervisory. McCullen v. Mercer, 192 Miss. 547, 6 So. 2d 465, 1942 Miss. LEXIS 38 (Miss. 1942).

Jurisdiction over state tide-water lands to sustain an action to recover for removal of sand and gravel therefrom is vested in the state attorney-general by reason of his statutory and common-law authority to represent the sovereign in the enforcement of its laws and protection of public rights, and not in the state land commissioner. State ex rel. Rice v. Stewart, 184 Miss. 202, 184 So. 44, 1938 Miss. LEXIS 306 (Miss. 1938).

OPINIONS OF THE ATTORNEY GENERAL

The Secretary of State has the authority to require the City of Long Beach and the Long Beach Port Commission to enter into a tidelands lease for water bottoms located within the commission harbor. Grisson, July 27, 1999, A.G. Op. #99-0253.

The Secretary of State may impose regulations, consistent with other laws of the state, regarding the lease of the tidelands, and such regulations may include prohibitions against certain activities or businesses, including gaming activities, if the Secretary of State makes the determination that such activity is injurious to the tidelands at a particular site. Grisson, July 27, 1999, A.G. Op. #99-0253.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 1 et seq.

Law Reviews.

Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C.L. Rev. 5, Fall 1990.

§ 7-11-13. Land records.

All state land records, all levee land records, and all other land records, except assessment rolls, shall be kept in the office of the Secretary of State and be held by him.

The Secretary of State shall keep a record of all state-owned lands in a separate and well bound book. He is authorized and empowered to request of any board, commission, department or other state agency having under its jurisdiction state-owned lands the records herein required to be recorded in his office, and it shall be the duty of any state agency to comply with the request of the Secretary of State.

HISTORY: Codes, 1892, § 2558; 1906, §§ 2896, 2932; Hemingway's 1917, §§ 5231, 5267; 1930, §§ 6007, 6014; 1942, §§ 4066, 4096; Laws, 1902, ch. 67; Laws, 1948, ch. 492; Laws, 1978, ch. 458, § 10, eff from and after January 1, 1980.

Cross References — Land office certificates as evidence, see § 13-1-131.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Lands §§ 1 et seq.

§ 7-11-15. Form of records.

The Secretary of State shall secure a sufficient number of suitable and well bound books for each county, so that the lands now or hereafter owned by the state may be complied therein. The books, in addition to the necessary columns on which to list all necessary information with reference to the lands owned, shall contain a column on which to number all patents or contracts issued and any other information. The order of arrangement and all other matters pertaining thereto are hereby specifically left to the discretion of the Secretary of State.

In addition to the foregoing records, the Secretary of State shall provide and cause to be kept a separate register of the several different classes of lands, with appropriate references to other records or documents for information concerning the whole class, and of each parcel, if need be. He may cause correct township maps to be prepared from the field notes of original surveys, with all errors in the location of natural objects, if any there be, corrected, which maps may be supplied to the several counties at reasonable prices; and he may, in like manner, have maps and plats lithographed and sold.

The Secretary of State shall procure a sufficient number of forms of certificates which shall be used by the chancery clerks of each of the various counties in certifying to the Secretary of State's office lands sold to the state for unpaid taxes in his county, and the Secretary of State shall provide such certificates in such form that they may be bond by him and used as a part of the permanent records of his office. The said chancery clerks shall use only such forms of certificates in certifying said lands to the Secretary of State's office, and failure to do so shall subject such chancery clerk so refusing or failing to do so, and his bondsman, to a penalty of five hundred dollars ($500.00), which penalty shall be collected by the Attorney General in a suit therefor filed in the name of the State of Mississippi. Such certificates, before being filed by the Secretary of State, shall be examined by the Attorney General. The Secretary of State, with the approval of the Attorney General, shall strike from such certificates all lands which, by reason of insufficient description or other cause, in the opinion of the Attorney General are not the property of the state; and the title of the state to such lands as may be thus stricken off shall be thereby relinquished.

HISTORY: Codes, 1892, §§ 2570, 2581; 1906, §§ 2908, 2920; Hemingway's 1917, §§ 5243, 5255; 1930, §§ 6015, 6016; 1942, §§ 4076, 4097, 4098; Laws, 1936, ch. 174; Laws, 1942, ch. 235; Laws, 1978, ch. 458, § 11, eff from and after January 1, 1980.

Cross References — Handling of funds derived from sale of properties under provisions of this section, see § 29-1-95.

§ 7-11-17. Records preserved and bound.

The land records in the Secretary of State's office shall be carefully preserved and valuable records shall be bound and rebound when necessary.

HISTORY: Codes, 1892, § 2562; 1906, § 2900; Hemingway's 1917, § 5235; 1930,

§ 6017; 1942, § 4099; Laws, 1978, ch. 458, § 12, eff from and after January 1, 1980.

§ 7-11-19. Copies of records.

The Secretary of State shall furnish to any party interested therein a copy or exemplification of any record, patent, plat, diagram, township plat or map, field notes, surveys or other paper or document deposited in the office of the Secretary of State and relating to the selection, location and survey of the public lands or otherwise concerning the same, upon the party paying therefor the fees allowed by law.

HISTORY: Codes, 1892, § 2569; 1906, § 2907; Hemingway's 1917, § 5242; 1930, § 6018; 1942, § 4100; Laws, 1978, ch. 458, § 13, eff from and after January 1, 1980.

Cross References — Fees, see § 25-7-85.

§ 7-11-21. Repealed.

Repealed by Laws, 1983, ch. 469, § 10, eff from and after July 1, 1983.

§ 7-11-21. [Codes, 1892, § 2572; 1906, § 2910; Hemingway's 1917, § 5245; 1930, § 6029; 1942, § 4111; Am Laws, 1978, ch. 458, § 14]

Editor's Notes — Former § 7-11-21 prohibited the land commissioner or any land office employees from buying state-owned land.

§ 7-11-23. Repealed.

Repealed by Laws 1978, ch. 458, § 29, eff from and after January 1, 1980.

§ 7-11-23. [Codes, 1892, § 2583; 1906, § 2922; Hemingway's 1917, § 5257; 1930, § 6052; 1942, § 4150]

Editor's Notes — Former § 7-11-23 required monthly reports to be submitted by the land commissioner to the auditor of public accounts.

§ 7-11-25. Report to legislature.

The Secretary of State shall make a report to the legislature at each regular session of all the business transactions in the Secretary of State's office pertaining to public lands for the preceding fiscal year. He shall state therein the monthly sale of land, of what class and where situated, amount of purchase-money received for each, the totals of his monthly reports to the auditor of fees collected; and he shall make such recommendations as may seem proper.

HISTORY: Codes, 1892, § 2584; 1906, § 2923; Hemingway's 1917, § 5258; 1930, § 6053; 1942, § 4151; Laws, 1970, ch. 552, § 1; Laws, 1978, ch. 458, § 15, eff from and after January 1, 1980.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

CHAPTER 13.

MISSISSIPPI ADMINISTRATIVE REORGANIZATION ACT

Sec.
7-13-1. Short title.
7-13-3. Legislative intent.
7-13-5. Repealed.
7-13-7. Transfer of employees.
7-13-9. Change of domicil affecting membership on board, commission, council or authority.

§ 7-13-1. Short title.

This chapter shall be cited as the "Mississippi Administrative Reorganization Act of 1984."

HISTORY: Laws, 1984, ch. 488, § 1, eff from and after July 1, 1984.

§ 7-13-3. Legislative intent.

It is the intent of this chapter to provide that the Governor and the executive branch of the government of the state of Mississippi shall have full authority to execute the laws of Mississippi and to administer and manage the affairs of state government in accordance with the Mississippi Constitution of 1890.

Provided, however, nothing in this chapter is intended to reduce in any manner the authority of the legislature to appropriate funds or to specify the means by which such funds are to be expended.

HISTORY: Laws, 1984, ch. 488, § 2, eff from and after July 1, 1984.

§ 7-13-5. Repealed.

Repealed by Laws, 1984, ch. 488, § 3, eff from and after July 1, 1984.

§ 7-13-5. [En Laws, 1984, ch. 488, § 3]

Editor's Notes — Former § 7-13-5 provided for the creation of a Transition Council for implementation of the Administrative Reorganization Act.

§ 7-13-7. Transfer of employees.

(1) Effective July 1, 1984, all employees of any agency abolished or affected by this chapter shall be transferred according to the merger of their duties by this chapter. All such transfers shall be in accordance with the rules and regulations of the state personnel board.

(2) It is the intent of the legislature that the number of persons employed by the state as the result of the consolidation required by this chapter shall be

reduced where possible, but it is the intent of the legislature that such reduction shall result from attrition of employees and not dismissal.

(3) All records, personnel, property and unexpended balances of appropriations, allocations or other funds of any agency abolished or affected by this chapter shall be transferred to the appropriate agency according to the merger of their functions under this chapter.

HISTORY: Laws, 1984, ch. 488, § 4, eff from and after July 1, 1984.

Cross References — Applicability of this section to expenses of the joint legislative budget committee, see § 27-103-101.

§ 7-13-9. Change of domicil affecting membership on board, commission, council or authority.

Any member of any board, commission, council or authority reconstituted under this chapter shall be deemed to have vacated his position thereon if he changes his domicile to another state or to a geographical area other than the one from which he was appointed if the statute specified that he shall be appointed from such designated geographical area. Provided, however, that this section shall not apply in the event the member was appointed from a district the boundaries of which have been altered by statute or court order.

HISTORY: Laws, 1984, ch. 488, § 332, eff from and after July 1, 1984.

CHAPTER 15.

EXECUTIVE BRANCH REORGANIZATION STUDY COMMISSION
[REPEALED]

Sec.
7-15-1 through 7-15-21. Repealed.

§§ 7-15-1 through 7-15-21.

Repealed by Laws, 1988, ch. 307 § 12, eff from and after December 31, 1988.

§§ 7-15-1 through 7-15-21. [En Laws, 1988, ch. 307 §§ 1-11]

Editor's Notes — Former Chapter 15 established the executive branch reorganization study commission to recommend structural changes in the organization of the executive branch of government. For the Mississippi Executive Reorganization Act of 1989, see Chapter 17 of this Title.

CHAPTER 17.

MISSISSIPPI EXECUTIVE REORGANIZATION ACT OF 1989

Article 1. General. 7-17-1
Article 3. Reorganization Transition. 7-17-31

ARTICLE 1.

GENERAL.

Sec.

7-17-1. Short title.
7-17-3. Legislative intent.
7-17-5. Transfer of employees, property, staff and funds; general powers and duties of executive directors of departments of executive branch.
7-17-7. Vacation of position of member of board, commission, council or authority upon change of residence; exception.
7-17-9. Governor to appoint departmental advisory boards.
7-17-11. Organizational structure and nomenclature for budgetary purposes.

§ 7-17-1. Short title.

Chapter 544, Laws of 1989, shall be cited as the "Mississippi Executive Reorganization Act of 1989."

HISTORY: Laws, 1989, ch. 544, § 1, eff from and after passage (approved April 19, 1989).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation changed the reference to "This act" at the beginning of the section to "Chapter 544, Laws of 1989" to clarify which act is being referred to. The Joint Committee ratified the correction at its August 12, 2019, meeting.

Editor's Notes — For a complete distribution of sections of the Mississippi Executive Reorganization Act of 1989 (Laws, 1989, ch. 544) see Allocation of Acts Table in the Statutory Tables Volume.

§ 7-17-3. Legislative intent.

It is the intent of "the Mississippi Executive Reorganization Act of 1989 [Chapter 544, Laws of 1989]" to provide that the Governor and the executive branch of the government of the State of Mississippi shall have full authority to execute the laws of Mississippi and to administer and manage the affairs of state government in accordance with the Mississippi Constitution of 1890.

Provided, however, nothing in "the Mississippi Executive Reorganization Act of 1989" is intended to reduce in any manner the authority of the Legislature to appropriate funds or to specify the means by which such funds are to be expended.

No executive director, division director or any other employee of any agency or department of this state shall be prohibited by the Governor or any other person, whether by written or verbal correspondence or by executive order, from cooperating with the Legislature for purposes of providing information to the Legislature, or any member thereof, regarding the legislative budget process or any other legislative matter.

HISTORY: Laws, 1989, ch. 544, § 2, eff from and after passage (approved April 19, 1989).

§ 7-17-5. Transfer of employees, property, staff and funds; general powers and duties of executive directors of departments of executive branch.

(1) Effective July 1, 1989, all employees of any agency abolished or affected by the Mississippi Executive Reorganization Act of 1989 [Chapter 544, Laws of 1989] shall be transferred according to the merger of their duties by the Mississippi Executive Reorganization Act of 1989. All personnel actions initiated as a result of the Mississippi Executive Reorganization Act of 1989 shall be subject to State Personnel Board procedures.

(2) The executive director of any agency of state government as defined in Section 25-9-107(d) shall have the authority to employ staff and to expend funds authorized to the agency for the performance of the duties and responsibilities accorded to the agency by the laws of the State of Mississippi.

(3) All records, personnel, property and unexpended balances of appropriations, allocations or other funds of any agency or department abolished or affected by the Mississippi Executive Reorganization Act of 1989 shall be transferred to the appropriate agency according to the merger of their functions under the Mississippi Executive Reorganization Act of 1989.

(4) The executive directors of agencies shall determine which employees shall be bonded, set the amount of bond, which shall be made by a surety company approved by the Secretary of State and the premiums paid as other expenses of administering the Mississippi Executive Reorganization Act of 1989.

(5) The executive director of any agency, where permitted by the rules, regulations and policies of the board, commission or authority of the agency, if any, shall also have authority to:

(a) Accept on behalf of the state gifts, trusts, bequests, grants, endowments, or transfers of property of any kind to be used for the sole benefit of the state;

(b) Use and expend funds coming to the agency from state, federal and private sources;

(c) Establish such rules and regulations as may be necessary in carrying out the provisions of the Mississippi Executive Reorganization Act of 1989;

(d) Formulate and administer policies of their respective agencies;

(e) Coordinate, supervise and direct all administrative and technical activities of the agency;

(f) Enter into contracts, grants and cooperative agreements with any federal or state agency, department or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with the carrying out of the provisions of the Mississippi Executive Reorganization Act of 1989, provided the agreements do not have a financial cost in excess of the amounts appropriated for such purposes by the Legislature;

(g) Except where otherwise prescribed by law, prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required by the Legislature or Governor, a full report of the work of the agency and the offices thereof, including a detailed statement of expenditures of the agency and any recommendations;

(h) Make provisions for adoption of rules, regulations and policy and provide for public inspection and filing of same; and other requirements set forth in the Mississippi Administrative Procedures Law in Section 25-43-1.101 et seq., except as otherwise provided by law.

HISTORY: Laws, 1989, ch. 544, § 3; Laws, 1990, ch. 522, § 1, eff from and after July 1, 1990.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (5)(h) by substituting "Mississippi Administrative Procedures Law in Section 25-43-1.101 et seq." for "Mississippi Administrative Procedures Act in Sections 25-43-1 through 25-43-19." The Joint Committee ratified the correction at its August 12, 2019, meeting.

Cross References — Additional provisions governing the transfer of powers, authority, duties, functions and funds, see § 7-17-33.

§ 7-17-7. Vacation of position of member of board, commission, council or authority upon change of residence; exception.

Any member of any board, commission, council or authority reconstituted under "the Mississippi Executive Reorganization Act of 1989 [Chapter 544, Laws of 1989]" shall be deemed to have vacated his position thereon if he changes his residence to another state or to a geographical area other than the one from which he was appointed if the statute specified that he shall be appointed from such designated geographical area. Provided, however, that this section shall not apply in the event the member was appointed from a district the boundaries of which have been altered by statute or court order.

HISTORY: Laws, 1989, ch. 544, § 4, eff from and after passage (approved April 19, 1989).

§ 7-17-9. Governor to appoint departmental advisory boards.

The Governor shall have the authority to appoint departmental advisory boards where otherwise required by law.

HISTORY: Laws, 1989, ch. 544, § 5, eff from and after passage (approved April 19, 1989).

§ 7-17-11. Organizational structure and nomenclature for budgetary purposes.

For budgetary purposes and organizational hierarchy purposes a common organizational nomenclature shall be used in the structure of state government.

Organizations for such purposes shall be:

(a) Agency – the principal administrative organization of state government as defined in Section 25-9-107(d), headed by an executive director or such other official as prescribed by statute;

(b) Office – the principal organization of an agency; whenever the term "division" or any other term appears to denote the principal organization of a department, it shall mean "office" for purposes of this section;

(c) Bureau – the principal organization of an office;

(d) Division – the principal organization of a bureau;

(e) Branch – the principal organization of a division;

(f) Section – the principal organization of a branch;

(g) Unit – the principal organization of a section;

(h) Advisory board – a body appointed to function on a continuing basis to study and recommend solutions and policy alternatives to problems arising in a specific agency or program of state government.

The nomenclature outlined in this section shall be only for budgetary purposes and organizational hierarchy purposes and shall not define job classifications or salary ranges. The State Personnel Board shall ensure that all agencies within state government as defined in Section 25-9-107(d) conform with the common organization nomenclature provided in this section, except where otherwise provided by law or determined to be necessary by the State Personnel Board.

HISTORY: Laws, 1989, ch. 544, § 6; Laws, 1990, ch. 522, § 2, eff from and after July 1, 1990.

ARTICLE 3.

REORGANIZATION TRANSITION.

Sec.

7-17-31. Repealed.
7-17-33. Transfer of powers, authority, duties, functions and funds; use of stationery and supplies of predecessor agency or department.
7-17-35. Agencies to assist in transition; rules and regulations; legislative intent concerning personnel reductions.
7-17-37. Procedures for eliminating and filling personnel positions; benefit rights of terminated employees.

§ 7-17-31. Repealed.

Repealed from and after June 30, 1990, by terms of Laws, 1989, ch. 544, § 7(7).

§ 7-17-31. [En Laws, 1989, ch. 544, § 7]

Editor's Notes — Former § 7-17-31 provided for the Reorganization Transition Council.

§ 7-17-33. Transfer of powers, authority, duties, functions and funds; use of stationery and supplies of predecessor agency or department.

All power, authority, duties and functions of the boards, commissions, departments and agencies abolished by "the Mississippi Executive Reorganization Act of 1989 [Chapter 544, Laws of 1989]" shall, from and after July 1, 1989, vest in and be performed by the departments or agencies to which they are assigned. All records, personnel, property and unexpended balances of appropriations, allocation or other funds of the abolished departments or agencies, except those transferred elsewhere by other provisions of "the Mississippi Executive Reorganization Act of 1989, shall be transferred under the direction of the State Fiscal Officer to the proper department or agency on July 1, 1989. The transfer of segregated or special funds shall be made in such a manner that the relation between program and revenue source as provided by law is retained.

The newly created Department of Economic and Community Development and the newly created Department of Environmental Quality shall continue to use the stationery or other supplies having thereon the letterhead of their predecessor agency or department until such stationery or other supplies are depleted. Such newly created departments shall not expend any funds to purchase stationery or other supplies having thereon the letterhead of the newly created department until such time as the supplies of their predecessor agency or department are depleted as herein provided.

HISTORY: Laws, 1989, ch. 544, § 8, eff from and after passage (approved April 19, 1989).

Cross References — Additional provision governing the transfer of employees, property, staff and funds, see § 7-17-5.

§ 7-17-35. Agencies to assist in transition; rules and regulations; legislative intent concerning personnel reductions.

(1)(a) Each officer, department or agency subject to the provisions of "the Mississippi Executive Reorganization Act of 1989 [Chapter 544, Laws of 1989]" shall assist with the fullest degree of reasonable cooperation with any other officer, department or agency in carrying out the intent and purpose of "the Mississippi Executive Reorganization Act of 1989."

(b) Each officer, department or agency subject to the provisions of "the Mississippi Executive Reorganization Act of 1989 [Chapter 544, Laws of 1989]" is hereby authorized and empowered to promulgate all necessary rules and regulations not in conflict with "the Mississippi Executive Reorganization Act of 1989" necessary to accomplish an orderly transition pursuant to "the Mississippi Executive Reorganization Act of 1989."

(2) It is the intent of the Legislature that the number of persons employed by the various departments and agencies as a result of the consolidation required by "the Mississippi Executive Reorganization Act of 1989" shall be reduced, but it is the intent of the Legislature that wherever possible, such reduction shall result from attrition of employees, assistance in relocating to other positions in state government for which they are qualified, and by assistance in locating employment in the private sector.

HISTORY: Laws, 1989, ch. 544, § 9, eff from and after passage (approved April 19, 1989).

Cross References — Procedures for eliminating and filling positions, see § 7-17-37.

§ 7-17-37. Procedures for eliminating and filling personnel positions; benefit rights of terminated employees.

Upon the decision by a department executive director to eliminate a personnel position, the executive director shall notify the State Personnel Board and the affected employee of the intention to eliminate the position. No employee shall be required to vacate an eliminated position prior to sixty (60) days from the date notice is sent to that employee.

Executive directors hiring personnel to fill existing vacant positions shall first interview persons placed on the reduction in force list maintained by the State Personnel Board to fill positions for which they are qualified. If the executive director does not hire a person on the reduction in force list for a position for which he interviewed and is qualified, the executive director shall provide justification upon request by the interviewed person or the State Personnel Board.

If an employee whose position is terminated by virtue of the executive branch reorganization brought about by "the Mississippi Executive Reorganization Act of 1989 [Laws, 1989, Chapter 544]" is rehired by the State of Mississippi within three (3) years from the date of his termination, the employee shall have the same benefit date for leave accumulation purposes as he had when his position was terminated. Any accumulated leave benefits not given to the employee at the time his position was eliminated shall be restored to him upon his rehiring.

HISTORY: Laws, 1989, ch. 544, § 10, eff from and after passage (approved April 19, 1989).

Cross References — Legislative intent concerning personnel reductions, see § 7-17-35.

TITLE 9.

COURTS

Chapter 1. Provisions Common to Courts. 9-1-1
Chapter 3. Supreme Court. 9-3-1
Chapter 4. Court of Appeals of the State of Mississippi. 9-4-1
Chapter 5. Chancery Courts. 9-5-1
Chapter 7. Circuit Courts. 9-7-1
Chapter 9. County Courts. 9-9-1
Chapter 11. Justice Courts. 9-11-1
Chapter 13. Court Reporters and Court Reporting. 9-13-1
Chapter 15. Judicial Council [Repealed]. 9-15-1
Chapter 17. Court Administrators. 9-17-1
Chapter 19. Commission on Judicial Performance. 9-19-1
Chapter 21. Administrative Office of Courts. 9-21-1
Chapter 23. Intervention Courts. 9-23-1
Chapter 25. Veterans Treatment Courts. 9-25-1
Chapter 27. Rivers McGraw Mental Health Diversion Program Act. 9-27-1

CHAPTER 1.

PROVISIONS COMMON TO COURTS

General Provisions. 9-1-1
Electronic Filing and Storage of Court Documents. 9-1-51
Appointment to Judicial Office. 9-1-101

GENERAL PROVISIONS

Sec.
9-1-1 and 9-1-3. Repealed.
9-1-5. Extension into term in other county of same district.
9-1-7. Repealed.
9-1-9. Adjourning if the judge be absent.
9-1-11. Judge not to sit when interested or related.
9-1-13 through 9-1-15. Repealed.
9-1-17. Supreme Court, circuit, chancery and county courts and Court of Appeals may punish for contempt and refer certain persons for placement in restitution, house arrest or restorative justice center or program.
9-1-19. Authority of judges of supreme, circuit courts and chancellors and judges of Court of Appeals to grant remedial writs.
9-1-21. Repealed.
9-1-23. Judges conservators of peace; must reside in district.
9-1-25. Judges not to practice law.
9-1-27. Officers pro tempore to be appointed in certain cases.
9-1-29. Court to control clerk's office.
9-1-31. Records of office of clerk delivered to successor.
9-1-33. Minutes of Supreme Court, circuit, chancery and county courts and Court of Appeals.
9-1-35. Seal of court.

Sec.
9-1-36. Office allowance for circuit judges, chancellors and certain staff; procedure to employ certain staff members; title to tangible property; reports; adoption of rules and regulations.
9-1-37. Allowance for stationery.
9-1-38. Certain judicial records exempt from public access requirements.
9-1-39. Clerks of circuit, chancery and county courts in separate judicial districts in Harrison County.
9-1-41. Reasonableness of attorneys' fees; evidence.
9-1-43. Limit on compensation of chancery clerks and circuit clerks and their related employees; liability on bonds; chancery court clerk clearing accounts; circuit court clerk clearing accounts; journals and receipts; punishment for failure to deposit funds.
9-1-44. Appropriation of funds from county general fund to supplement payment of expenses of office of chancery or circuit clerk under certain circumstances.
9-1-45. Filing of annual reports by chancery and circuit clerks; failure to provide report; notice of noncompliance; hearing to determine level of compliance; penalties for noncompliance.
9-1-46. Semiannual reports by clerks of county, municipal and justice courts to Administrative Office of Courts; information to be included.
9-1-47. Municipal and justice courts authorized to purge judgment rolls of fines and fees owed by deceased person.
9-1-49. Report concerning certain persons' access to firearms.

§§ 9-1-1 and 9-1-3. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-1-1. [Codes, Hutchinson's 1848, ch. 53, art. 8 (1); 1857, ch. 61, art. 4; 1871, § 878; 1880, § 2263; 1892, § 912; 1906, § 988; Hemingway's 1917, § 708; 1930, § 731; 1942, § 1646; Laws, 1914, ch. 239]

§ 9-1-3. [Codes, 1880, §§ 2263, 2292; 1892, §§ 912, 933; 1906, §§ 988, 1009; Hemingway's 1917, §§ 708, 729; 1930, § 732; 1942, § 1647; Laws, 1914, ch. 239]

Editor's Notes — Former § 9-1-1 authorized the holding of special terms of courts.

Former § 9-1-3 specified conditions under which the term of court could be extended without a special order, or by order entered on the minutes of the court.

§ 9-1-5. Extension into term in other county of same district.

In order to utilize the services of a judge temporarily assigned to chancery or circuit court in a county, the chancery or circuit court judge is authorized to extend a term of his court in one (1) county in a district, even if it overlaps into a term of that court in another county in the same district, so long as the term of court in the county into which the extension runs shall not be pretermitted. The Nineteenth Chancery Court District and the Eighteenth Circuit Court District are hereby excepted from the provisions of this section.

The word "county" wherever used herein shall be construed to mean "judicial district" in counties having two (2) judicial districts.

HISTORY: Codes, 1942, § 1647.5; Laws, 1970, ch. 327, § 1, eff from and after passage (approved April 3, 1970).

§ 9-1-7. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-1-7. [Codes, Hutchinson's 1848, ch. 53, art. 10 (4); 1857, ch. 61, art. 3; 1871, § 877; 1880, § 2266; 1892, § 915; 1906, § 991; Hemingway's 1917, § 711; 1930, § 735; 1942, § 1650]

Editor's Notes — Former § 9-1-7 provided that a change in the time or place of holding any court would not affect writs, process, bonds, recognizances, etc. issued or pending before the change.

§ 9-1-9. Adjourning if the judge be absent.

If the circuit judge or chancellor fail to attend at any term of the court, it shall stand adjourned from day to day until the third day, when, if the judge or chancellor shall not appear and open court, it shall stand adjourned without day; but, by virtue of a written order by the judge or chancellor, it may be adjourned by the clerk or sheriff to any day of the term, as the order may direct, and parties, witnesses and jurors must attend accordingly.

HISTORY: Codes, Hutchinson's 1848, ch. 54, art 2 (6); 1857, ch. 61, art. 6, ch. 62, art. 10; 1871, §§ 881, 984; 1880, § 2264; 1892, § 913; 1906, § 989; Hemingway's 1917, § 709; 1930, § 733; 1942, § 1648.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Circuit court.
3. Chancery court.

1. In general.

Where the presiding judge of the court died during the term at which the defendant was indicted for murder and arraigned, and failed to sign any of the minutes of the term prior to his death, and during the interim before the appearance of the successor, the clerk of the court noted on the minutes thereof the judge's absence and adjournment of court from day to day, and thereafter the duly appointed and qualified successor approved and signed the minutes of what transpired prior to the day on which he assumed the duties of the office, as reported by the clerk, overruling by such successor of a motion to quash the indictment, predicated on the lack of authority in such successor to sign the minutes of transactions taking place prior to his assumption of office, was proper. Grant v. State, 189 Miss. 341, 197 So. 826, 1940 Miss. LEXIS 124 (Miss. 1940).

Appeal taken within six months after rendition of order overruling new trial held not barred, though motion made at November term was not acted on until following July term. Mayflower Mills v. Breeland, 168 Miss. 207, 149 So. 787, 1933 Miss. LEXIS 162 (Miss. 1933), overruled, Haralson v. State, 308 So. 2d 222, 1975 Miss. LEXIS 1852 (Miss. 1975).

Court convened on a day other than that set by law, except as provided by this section. [Code 1942 § 1648], is not a legal court. Steverson v. McLeod Lumber Co., 120 Miss. 65, 81 So. 788, 1919 Miss. LEXIS 67 (Miss. 1919).

This section [Code 1942 § 1648] provides for an adjourned session only if the judge be absent. Beard v. McLain, 117 Miss. 316, 78 So. 184, 1918 Miss. LEXIS 180 (Miss. 1918).

2. Circuit court.

Order in effect adjourning regular term of circuit court to later day, pursuant to which sheriff and clerk adjourned court, held valid. Mississippi & S. V. R. Co. v. Brown, 160 Miss. 123, 132 So. 556, 1931 Miss. LEXIS 124 (Miss. 1931).

Where circuit judge is unable to attend term of court on opening day or subsequent day, he may have order entered on minutes recessing court to future day during term. Perry v. State, 154 Miss. 459, 122 So. 744, 1929 Miss. LEXIS 164 (Miss. 1929).

Circuit judges have no authority to pretermit court terms, but they may be adjourned under statute. Ivey v. State, 154 Miss. 60, 119 So. 507, 1928 Miss. LEXIS 198 (Miss. 1928).

3. Chancery court.

Power of chancellor to authorize clerk or sheriff to adjourn court to later date exhausted when once exercised. Williams v. Simon, 135 Miss. 562, 99 So. 433, 1924 Miss. LEXIS 92 (Miss. 1924).

Where the chancery court directed the clerk to adjourn the regular term on a designated day, a decree in a suit pending on the first day of the regular term, rendered on the adjourned day, was not rendered at a special term, but at an adjourned term. First Nat'l Bank v. Abe Block & Co., 82 Miss. 197, 33 So. 849, 1903 Miss. LEXIS 115 (Miss. 1903).

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts § 23.

CJS.
21 C.J.S., Courts §§ 157-159.

§ 9-1-11. Judge not to sit when interested or related.

The judge of a court shall not preside on the trial of any cause where the parties, or either of them, shall be connected with him by affinity or consanguinity, or where he may be interested in the same, or wherein he may have been of counsel, except by the consent of the judge and of the parties.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 2 (186), ch. 54, art. 2 (7); 1857, ch. 61, art. 12, ch. 62, art. 7; 1871; § 986; 1880, § 2270; 1892, § 919; 1906, § 995; Hemingway's 1917, § 715; 1930, § 736; 1942, § 1651.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Relationship to parties.
3. Relationship to counsel for parties.
4. Relationship to victim of crime.
5. Interest in cause.
6. Prior interest in cause as counsel.
7. Consent.
8. Proceedings for disqualification.

1. In general.

Trial court did not abuse its discretion in denying a mother's motion for recusal as the appellate record did not identify any evidence under Miss. Const. Art. 6, § 165 or Miss. Code. Ann. § 9-1-11 that would disqualify the trial judge. J.N.W.E. v. W.D.W., 922 So. 2d 12, 2005 Miss. App. LEXIS 489 (Miss. Ct. App. 2005), cert. denied, 926 So. 2d 922, 2006 Miss. LEXIS 129 (Miss. 2006).

Presumption is that judge, sworn to administer impartial justice, is qualified and unbiased; to overcome presumption, evidence must produce reasonable doubt about validity of presumption. Hunter v. State, 684 So. 2d 625, 1996 Miss. LEXIS 288 (Miss. 1996).

Judge is required to disqualify himself or herself if reasonable person, knowing all circumstances, would harbor doubts about his or her impartiality. Hunter v. State, 684 So. 2d 625, 1996 Miss. LEXIS 288 (Miss. 1996); Dowbak v. State, 666 So. 2d 1377, 1996 Miss. LEXIS 6 (Miss. 1996).

When judge is not disqualified by Constitution or statute, propriety of decision not to recuse himself or herself is reviewed for abuse of discretion. Dowbak v.

State, 666 So. 2d 1377, 1996 Miss. LEXIS 6 (Miss. 1996).

In a proceeding for enforcement against the plaintiff of an oral settlement agreement allegedly reached regarding an automobile accident personal injury claim, the judge should have recused himself where he was present in the room during the critical settlement conference and was a witness to factual matters pertaining to the central issue of the credibility of the plaintiff and the plaintiff's witnesses. Collins v. Dixie Transport, Inc., 543 So. 2d 160, 1989 Miss. LEXIS 196 (Miss. 1989).

A judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubt about his impartiality. Rutland v. Pridgen, 493 So. 2d 952, 1986 Miss. LEXIS 2594 (Miss. 1986).

The chancellor did not err in refusing to recuse himself in an action by county taxpayers protesting the issuance of tax anticipation notes by the county board of supervisors where he was not related to any of the parties, and was not otherwise interested in the cause of action. West v. Greene County Board of Supervisors, 368 So. 2d 1260, 1979 Miss. LEXIS 2253 (Miss. 1979).

2. Relationship to parties.

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge's failure to recuse herself from a case involving a family member violated constitutional and statutory law. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997, 2016 Miss. LEXIS 241 (Miss. 2016).

In a case alleging tortious interference with business relations, there was no error based on a trial judge's failure to recuse himself under Miss. Unif. Cir. & Cty. R. 1.15 because the owners failed to raise the issue of alleged impartiality at the trial court level; the owners' website showed that they knew of a grounds for recusal at the time of trial, and even if the owners had not been able to raise this issue before the trial judge, a reversal would still not have been granted because the judge was not connected to the objectors by affinity or consanguinity, and he had no interest in the outcome of the case based on vague allegations that the judge had eaten at the owners' lodge. Bateman v. Gray, 963 So. 2d 1284, 2007 Miss. App. LEXIS 595 (Miss. Ct. App. 2007).

Trial judge was not required to disqualify himself under Miss. Const. Art. VI, § 165, Miss. Code Ann. § 9-1-11, or Miss. Unif. Cir. & County Ct. Prac. R. 1.15 where there was no evidence that the trial judge was connected with the parties through marriage or blood and there was no evidence that the judge may have had an interest in the outcome of the proceeding, or that he was otherwise precluded by the statute; it was only in causes wherein the judge may have been of counsel that provided for disqualification. Hathcock v. S. Farm Bureau Cas. Ins. Co., 912 So. 2d 844, 2005 Miss. LEXIS 213 (Miss. 2005).

In an action against a school for injuries sustained by a five-year-old child, the trial judge did not err in failing to recuse himself based on the fact that he, as lead attorney, had cross-examined the child's father as a medical expert witness in prior cases. Summers v. St. Andrew's Episcopal Sch., 759 So. 2d 1203, 2000 Miss. LEXIS 117 (Miss. 2000).

Defendant in capital murder trial was not prejudiced by trial judge's denial of his motion for recusal, though trial judge's former law firm had represented victim in divorce action, trial judge's nephew who was member of same law firm represented victim's estate and victim's daughter, and victim's daughter was witness against defendant at trial; there was nothing in manner trial judge presided over trial which indicated prejudice to defendant, and there was no evidence of any financial arrangements between trial judge and his former law firm. Hunter v. State, 684 So. 2d 625, 1996 Miss. LEXIS 288 (Miss. 1996).

Where the prosecuting witness in a case brought under the "bad check" statute was his first cousin, the trial judge should have recused himself. Black v. State, 187 So. 2d 815, 1966 Miss. LEXIS 1355 (Miss. 1966).

A trial judge should avoid sitting in a case where the sole prosecuting witness is a near relative who is interested in the outcome of the prosecution. Black v. State, 187 So. 2d 815, 1966 Miss. LEXIS 1355 (Miss. 1966).

Judge is not disqualified to sit in a case unless connected with party by affinity or consanguinity, or pecuniarily interested. Cashin v. Murphy, 138 Miss. 853, 103 So. 787, 1925 Miss. LEXIS 93 (Miss. 1925).

Chancellor whose wife had deposit in bank, and who had other relatives connected with it, disqualified in proceedings for receivership. Dodd v. Kelley, 107 Miss. 471, 65 So. 561, 1914 Miss. LEXIS 110 (Miss. 1914).

Justice of peace disqualified where first cousin was president of corporation, one of the parties. Nimocks v. McGehee, 97 Miss. 321, 52 So. 626, 1910 Miss. LEXIS 251 (Miss. 1910).

3. Relationship to counsel for parties.

Recusal was not required by fact that judge was brother-in-law of attorney retained to help defense with jury selection, where all parties agreed to judge's continued service, judge did not act in bad faith or dishonestly, and jury was not informed of the relationship. Dowbak v. State, 666 So. 2d 1377, 1996 Miss. LEXIS 6 (Miss. 1996).

A trial judge who was the brother of a senior partner in a law firm representing a principal defendant should have recused himself from the case because of the appearance of impropriety. Trial judges in such a situation, particularly where the judge has filed a notice of relationship and a motion has been made for recusal because of the close kinship, should grant the motion and decline to participate in the case. In re Moffett, 556 So. 2d 723, 1990 Miss. LEXIS 30 (Miss. 1990).

A special chancellor in a divorce proceeding should have recused himself where both the chancellor and the husband had law offices in the same town, they had played golf together on several occasions and had had lunch together on one occasion, although, standing alone, the chancellor's failure to recuse himself was not reversible error. Robinson v. Irwin, 546 So. 2d 683, 1989 Miss. LEXIS 321 (Miss. 1989).

A judge in a medical malpractice action should have recused himself in light of the fact that the judge's brother was a senior partner in the law firm representing the defendant hospital, obviously a part of the medical community, coupled with allegations and testimony that the medical community in the county had assisted in electing the judge, since this would lead a reasonable person, with knowledge of the circumstances, to harbor doubts about the judge's impartiality. Jenkins v. Forrest County General Hosp., 542 So. 2d 1180, 1988 Miss. LEXIS 642 (Miss. 1988).

Judge is not disqualified from hearing homicide case on basis of fact that homicide defendant's former attorney, against whom defendant has filed bar complaint, has at one time been law partner of judge. Ruffin v. State, 481 So. 2d 312, 1985 Miss. LEXIS 2432 (Miss. 1985); Jenkins v. Forrest County General Hosp., 542 So. 2d 1180, 1988 Miss. LEXIS 642 (Miss. 1988).

Relationship to attorney not disqualification; suggestion of disqualification must be made before trial unless knowledge acquired subsequently. Shireman v. Wildberger, 125 Miss. 499, 87 So. 657, 1921 Miss. LEXIS 123 (Miss. 1921).

Relationship to attorney does not disqualify; "party" defined. Norwich Union Fire Ins. Co. v. Standard Drug Co., 121 Miss. 510, 83 So. 676, 1920 Miss. LEXIS 97 (Miss. 1920).

However, a judge is disqualified where son and brother-in-law have taken case on contingent basis. Yazoo & M. V. R. Co. v. Kirk, 102 Miss. 41, 58 So. 710, 1912 Miss. LEXIS 28 (Miss.), modified, 102 Miss. 56, 58 So. 834 (Miss. 1912), limited, Norwich Union Fire Ins. Co. v. Standard Drug Co., 121 Miss. 510, 83 So. 676, 1920 Miss. LEXIS 97 (Miss. 1920).

4. Relationship to victim of crime.

In a prosecution for capital murder, the trial judge did not err in refusing to recuse himself under this section, on the grounds that he was a near relative of the victim, where the judge was at most a third or fourth cousin of the deceased and could not be considered a close relative and where the record reflected no bias or prejudice on the part of the judge. Coleman v. State, 378 So. 2d 640, 1979 Miss. LEXIS 2542 (Miss. 1979); Jenkins v. Forrest County General Hosp., 542 So. 2d 1180, 1988 Miss. LEXIS 642 (Miss. 1988).

5. Interest in cause.

Postconviction relief was properly denied in a burglary case because the trial judge did nothing more than accept appellant's plea and give the appropriate sentence; therefore, he did not get involved and there was no reason for him to recuse himself. Christie v. State, 915 So. 2d 1073, 2005 Miss. App. LEXIS 852 (Miss. Ct. App. 2005).

Defendant's convictions for armed robbery and arson were proper where merely presenting a document which, testimony revealed, was inaccurate and written at the behest of defendant, was insufficient to establish that the judge had an interest in the outcome; defendant did not explain what benefit, other than to disqualify the judge, the testimony would have been to his case or how he was prejudiced by its absence. Payton v. State, 897 So. 2d 921, 2003 Miss. LEXIS 602 (Miss. 2003).

Judge is not disqualified to issue fiat for injunction restraining writ of execution against garnishee by mere fact that he rendered the judgment on which the garnishment was predicated. Campbell v. Yazoo & M. V. R. Co., 199 Miss. 309, 24 So. 2d 531, 1946 Miss. LEXIS 199 (Miss. 1946).

Judge not disqualified to sit in case, unless connected with party by affinity or consanguinity, or pecuniarily interested. Cashin v. Murphy, 138 Miss. 853, 103 So. 787, 1925 Miss. LEXIS 93 (Miss. 1925).

6. Prior interest in cause as counsel.

Trial judge abused his discretion in declining to recuse himself in a prosecution for aggravated assault and forcible rape of child, since he had served as county prosecuting attorney in an earlier youth-court shelter hearing regarding the child's custody as a result of the events giving rise to the criminal charges, and 1) the threshold issue in that hearing was whether the complainant was an "abused child" under Miss. Code Ann. § 43-21-105(m), which went to the heart of the issue of defendant's guilt; 2) the judge might have personal knowledge of disputed evidentiary facts concerning the criminal case due to his participation in the youth-court shelter hearing. Miller v. State, 94 So. 3d 1120, 2012 Miss. LEXIS 384 (Miss. 2012).

Because the judge appeared on behalf of the state as an assistant district attorney at the inmate's plea colloquy he abused his discretion when he failed to recuse himself and ruled on the inmate's post-conviction relief motion. Both due process and Miss. Code Ann. § 9-1-11 required reversal of the dismissal of the inmate's motion post conviction relief. Overstreet v. State, 17 So. 3d 621, 2009 Miss. App. LEXIS 609 (Miss. Ct. App. 2009).

Because the judge appeared on behalf of the state as an assistant district attorney at the inmate's plea colloquy he abused his discretion when he failed to recuse himself and ruled on the inmate's post-conviction relief motion. Both due process and Miss. Code Ann. § 9-1-11 required reversal of the dismissal of the inmate's motion post conviction relief. Overstreet v. State, 17 So. 3d 621, 2009 Miss. App. LEXIS 609 (Miss. Ct. App. 2009).

Defendant in capital murder trial was not prejudiced by trial judge's denial of his motion for recusal, though trial judge's former law firm had represented victim in divorce action, trial judge's nephew who was member of same law firm represented victim's estate and victim's daughter, and victim's daughter was witness against defendant at trial; there was nothing in manner trial judge presided over trial which indicated prejudice to defendant, and there was no evidence of any financial arrangements between trial judge and his former law firm. Hunter v. State, 684 So. 2d 625, 1996 Miss. LEXIS 288 (Miss. 1996).

A circuit court judge should have recused himself in a medical malpractice action against a physician and a hospital where the judge had previously acted as counsel for the hospital, and the physician had been hired by the hospital during the time of the judge's representation. Collins v. Joshi, 611 So. 2d 898, 1992 Miss. LEXIS 795 (Miss. 1992).

A judge would be disqualified from ruling on a defendant's motion for an evidentiary hearing under the Mississippi Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seg.) where the judge was also the district attorney who signed the indictment. Moore v. State, 573 So. 2d 688, 1990 Miss. LEXIS 782 (Miss. 1990).

Evidence that a Supreme Court justice had served as Attorney General at the time the defendant was extradited from another state was insufficient to overcome the presumption that the justice was qualified and unbiased, where the justice had no personal involvement in or actual knowledge of the defendant's case while he was Attorney General, the Office of Attorney General exercised no responsibility in the defendant's trial, the involvement of the Office of Attorney General in the actual extradition of the defendant was minimal, and the Attorney General's entrance into the case arose after being noticed by the filing of the defendant's appeal which occurred only one week prior to the justice's departure from the Office of Attorney General. Turner v. State, 573 So. 2d 657, 1990 Miss. LEXIS 792 (Miss. 1990), cert. denied, 500 U.S. 910, 111 S. Ct. 1695, 114 L. Ed. 2d 89, 1991 U.S. LEXIS 2522 (U.S. 1991).

A judge who had served as the prosecutor at the time of the defendant's indictment should have disqualified himself; the very functions involved in the performance of the positions of judge and prosecutor are contradictory and no person can be considered to be impartial while that person is also acting as a partisan. Since the judge failed to disqualify himself, the defendant was deprived of due process, which includes a fair and impartial trial. Jenkins v. State, 570 So. 2d 1191, 1990 Miss. LEXIS 701 (Miss. 1990).

Chancellor, who had represented one of the parties in 2 separate uniform reciprocal enforcement support act complaints in his official capacity as county attorney, was not required to disqualify himself in a child custody case. Rutland v. Pridgen, 493 So. 2d 952, 1986 Miss. LEXIS 2594 (Miss. 1986).

The statute does not disqualify a judge who had been the district attorney and had drawn the statutory indictment for murder upon which defendant was tried. Kirby v. State, 78 Miss. 175, 28 So. 846, 1900 Miss. LEXIS 104 (Miss. 1900).

Where the prisoner was tried and convicted, but his sentence was postponed, and the judge who tried the case went out of office, and one who had been consulted and retained as counsel for the state by the prosecuting attorney succeeded to the bench, the latter can pass sentence. Thomas v. State, 6 Miss. 20, 1840 Miss. LEXIS 56 (Miss. 1840).

7. Consent.

Circuit judge, who as an assistant district attorney had participated in a suspect's prosecution, was disqualified from ruling on the suspect's motion for postconviction relief and should have recused himself because, even assuming that the suspect had effectively waived the judge's disqualification to preside over his guilty plea hearing, that waiver did not extend to the postconviction proceeding, which was separate and distinct from the underlying criminal proceeding. Holmes v. State, 966 So. 2d 858, 2007 Miss. App. LEXIS 668 (Miss. Ct. App. 2007).

Denial of the mother's motion to recuse the judge was proper where the mother brought up the issue of recusal of the judge after the case was decided against her; therefore, she effectively acquiesced to the judge hearing her case. Watts v. Watts, 854 So. 2d 11, 2003 Miss. App. LEXIS 143 (Miss. Ct. App.), cert. denied, 859 So. 2d 392, 2003 Miss. LEXIS 378 (Miss. 2003).

Consent of parties presumed if qualifications of judge not questioned before final judgment, but objection may be made on motion for new trial if attorneys did not know of disqualification. Yazoo & M. V. R. Co. v. Kirk, 102 Miss. 41, 58 So. 710, 1912 Miss. LEXIS 28 (Miss.), modified, 102 Miss. 56, 58 So. 834 (Miss. 1912), limited, Norwich Union Fire Ins. Co. v. Standard Drug Co., 121 Miss. 510, 83 So. 676, 1920 Miss. LEXIS 97 (Miss. 1920).

8. Proceedings for disqualification.

While attorney may rightfully, in cases where he or she thinks judge's relations would result to injury of defendant, move for recusation of judge, Supreme Court, in such case, will look to whole trial and pass upon questions on appeal in light of completed trial; every act and movement had during entire trial will be considered, and if Supreme Court is unable to find that rulings have been prejudicial to defendant, it will not reverse. Hunter v. State, 684 So. 2d 625, 1996 Miss. LEXIS 288 (Miss. 1996).

When judge is not disqualified under constitutional or statutory provisions, propriety of his or her sitting is question to be decided by judge and is subject to review only in case of manifest abuse of discretion. Hunter v. State, 684 So. 2d 625, 1996 Miss. LEXIS 288 (Miss. 1996).

Motion for new trial charging presiding judge with being unfair and partial, and charging him with political bias and race prejudice, and asking judge to recuse himself in order that movant might have a fair and competent judge, in absence of explanations, held contemptuous. Ex parte Redmond, 156 Miss. 582, 126 So. 485, 1930 Miss. LEXIS 208 (Miss. 1930).

Ex parte affidavits inadmissible as evidence on recusation motion. Cashin v. Murphy, 138 Miss. 853, 103 So. 787, 1925 Miss. LEXIS 93 (Miss. 1925).

Judge, attacked by recusation motion, may hear and determine it instead of surrendering bench to another to pass thereon. Cashin v. Murphy, 138 Miss. 853, 103 So. 787, 1925 Miss. LEXIS 93 (Miss. 1925).

Suggestion of disqualification must be made before trial unless knowledge is acquired subsequently. Shireman v. Wildberger, 125 Miss. 499, 87 So. 657, 1921 Miss. LEXIS 123 (Miss. 1921).

OPINIONS OF THE ATTORNEY GENERAL

A practicing attorney selected as a special judge for service on the Supreme Court may remain of counsel in all cases presently pending in the state and federal courts. However, pursuant to § 9-1-25 which applies to any judge of the Supreme Court, a special judge may not be engaged in the practice of law and, therefore, may not practice in any of the state courts during his tenure as a special judge. A special judge may, pursuant to the same statute, practice in the federal courts in any case in which he or she was engaged when appointed. Hurst, May, 21, 2004, A.G. Op. 04-0180.

RESEARCH REFERENCES

ALR.

Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification. 10 A.L.R.2d 1307.

Relationship to attorney as disqualifying judge. 50 A.L.R.2d 143.

Disqualification of judge in contempt proceedings involving himself or court of which he is member. 64 A.L.R.2d 600.

Prior representation or activity as attorney or counsel as disqualifying judge. 72 A.L.R.2d 443.

Time for asserting disqualification of judge, and waiver of disqualification. 73 A.L.R.2d 1238.

Intervenor's right to disqualify judge. 92 A.L.R.2d 1110.

Disqualification of judge because of his or another's holding or owning stock in corporation involved in litigation. 25 A.L.R.3d 1331.

Disqualification of judge, justice of the peace, or similar judicial officer for pecuniary interest in fines, forfeitures, or fees payable by litigants. 72 A.L.R.3d 375.

Membership in fraternal or socil club or order affected by a case as ground for disqualification of judge. 75 A.L.R.3d 1021.

Prior representation or activity as prosecuting attorney as disqualifying judge from sitting or acting in criminal case. 16 A.L.R.4th 550.

Disqualification of judge in state proceedings to punish contempt against or involving himself in open court and in his actual presence. 37 A.L.R.4th 1004.

Disqualification of judge because of political association or relation to attorney in case. 65 A.L.R.4th 73.

Disqualification from criminal proceeding of trial judge who earlier presided over disposition of case of coparticipant. 72 A.L.R.4th 651.

Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 A.L.R.4th 700.

Substitution of judge in state criminal trial. 45 A.L.R.5th 591.

Prior Representation or Activity as Prosecuting Attorney as Disqualifying Judge From Sitting or Acting in Criminal Case. 85 A.L.R.5th 471.

Disqualification of Judge for Having Decided Different Case Against Litigant – State Cases. 85 A.L.R.5th 547.

Laws governing judicial recusal or disqualification in state proceeding as violating federal or state constitution. 91 A.L.R.5th 437.

Construction of provision in Federal Criminal Procedure Rule 42(b) that if contempt charges involve disrespect to or criticism of judge, he is disqualified from presiding at trial or hearing except with defendant's consent. 3 A.L.R. Fed. 420.

Disqualification of judge under 28 USCS § 455(b)(5)(iii), where judge or his or her spouse, or certain of their relatives, is known to have an interest that could be affected by the proceeding. 54 A.L.R. Fed. 855.

Disqualification of judge under 28 USCS § 455(b)(4), providing for disqualification where judge has financial or other interest in proceeding. 55 A.L.R. Fed. 650; 163 A.L.R. Fed. 575.

Am. Jur.

15 Am. Jur. Pl & Pr Forms (Rev), Judges, Form 31.1 (Affidavit – In support of petition to disqualify judge – partiality of judge).

CJS.

48A C.J.S., Judges §§ 137, 138, 264-266, 290.

§§ 9-1-13 through 9-1-15. Repealed.

Repealed by Laws, 1989, ch. 587, § 7, eff from and after April 25, 1989 (became law without the Governor's signature).

§ 9-1-13. [Codes, 1892, § 921; 1906, § 997; Hemingway's 1917, § 717; 1930, § 738; 1942, § 1653; Laws, 1928, Ex. ch. 86; Laws, 1952, ch. 235; Laws, 1966, ch. 352, § 2; Laws, 1988, ch. 429, § 2]

§ 9-1-14. [En Laws 1983, ch. 518; Laws, 1986, ch. 504]

§ 9-1-15. [Codes, 1942, § 1653.5; Laws, 1968, ch. 313, § 1]

Editor's Notes — Former § 9-1-13 permitted the commission of special judges to fill in for sick or disabled circuit judges, county judges, or chancellors.

Former § 9-1-14 permitted the reactivation of retired chancery, circuit, or county judges in emergency situations.

Former § 9-1-15 permitted the governor to appoint full-time replacement chancery and circuit judges for periods of extended disability of sitting judges.

For present similar provisions, see § 9-1-105.

§ 9-1-17. Supreme Court, circuit, chancery and county courts and Court of Appeals may punish for contempt and refer certain persons for placement in restitution, house arrest or restorative justice center or program.

The Supreme, circuit, chancery and county courts and the Court of Appeals shall have power to fine and imprison any person guilty of contempt of the court while sitting, but the fine shall not exceed One Hundred Dollars ($100.00) for each offense, nor shall the imprisonment continue longer than thirty (30) days. If any witness refuse to be sworn or to give evidence, or if any officer or person refuse to obey or perform any rules, order, or judgment of the court, such court shall have power to fine and imprison such officer or person until he shall give evidence, or until the rule, order, or judgment shall be complied with.

At the discretion of the court, any person found in contempt for failure to pay child support and imprisoned therefor may be referred for placement in a state, county or municipal restitution, house arrest or restorative justice center or program, provided such person meets the qualifications prescribed in Section 99-37-19.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 2 (177), ch. 54, art. 2 (48); 1857, ch. 61, art. 37, ch. 62, art. 4; 1871, §§ 538, 980; 1880, § 2273; 1892, § 923; 1906, § 999; Hemingway's 1917, § 719; 1930, § 741; 1942, § 1656; Laws, 1928, ch. 42; Laws, 1993, ch. 518, § 10; Laws, 2009, ch. 367, § 1, eff from and after July 1, 2009.

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Authority of impaneling judge of state grand jury to punish for contempt as provided in this section, see § 13-7-21.

Contempt for refusal to present books, records, or invoices reflecting transactions involving the purchase, gift, or sale of tobacco by persons subject to tax, see § 27-69-35.

Disobedience of final order in consumer protection proceeding constituting contempt, see § 75-24-17.

Court's authority in proper cases to adjudge party in contempt, see Miss. R. Civ. P. 70.

Circuit Court may punish non-compliance with Uniform Circuit Court Rules as contempt, see Uniform Circuit and County Court Rule 1.03.

Inapplicability of Mississippi Rules of Evidence in contempt proceedings, see Miss. R. Evid. 1101.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Contempt, what constitutes.
3. —Constructive contempt.
4. Rights of defendant.
5. Proceedings for contempt.
6. —Information.
7. —Evidence.
8. —Judgment.
9. —Review.

1. In general.

Chancery court could hold a mother in contempt pursuant to Miss. Code Ann. § 9-1-17 because her failure to pay her portion of a car lease constituted a direct violation of the chancery court's order. Mercier v. Mercier, 11 So. 3d 1283, 2009 Miss. App. LEXIS 365 (Miss. Ct. App. 2009).

Where a decedent's daughter was held in contempt for failing to inventory and turn over to decedent's wife all assets in her possession that belonged to the decedent's estate, the contempt was civil and not criminal because: (1) the contempt order's primary purpose was to enforce the wife's rights to possess the decedent's property, and (2) the daughter had been ordered not to pay a fine to the court, but only to pay the wife's attorney's fees. Fisher v. Patton (In re Estate of Patton), 971 So. 2d 1281, 2008 Miss. App. LEXIS 10 (Miss. Ct. App. 2008).

The limits of the statute apply only

where the sanction is imposed for direct contempt; the limits do not apply to constructive contempt. Wyssbrod v. Wittjen, 798 So. 2d 352, 2001 Miss. LEXIS 23 (Miss. 2001).

It was proper for a chancellor to find a father not in contempt for failure to pay the full amount of child support required where the father filed for a modification of child support before the children's mother filed the motion for contempt concerning the arrearage in child support payments. Thurman v. Thurman, 559 So. 2d 1014, 1990 Miss. LEXIS 185 (Miss. 1990).

A petition to hold a county board of supervisors in contempt for failure to comply with a consent decree was a petition for criminal contempt rather than civil contempt, where the alleged contempt did not consist of the defendants refusing to do any affirmative act required but rather doing that which had been prohibited, and the petition recited that prior acts of the defendants justified an increase in previously imposed criminal sanctions "in order to deter such defendants from further violations." Common Cause of Mississippi v. Smith, 548 So. 2d 412, 1989 Miss. LEXIS 362 (Miss. 1989).

The indemnitor of surety company, which had furnished payment and performance bonds in connection with construction contracts, held in civil contempt for refusal to comply with decree of state chancery court requiring him to provide financial statements and disclose the whereabouts of his assets, and whose refusal was based on the ground that compliance with the decree would result in self-incrimination under the fourth and fifth amendments to the federal constitution, was directed to furnish the required information if granted immunity from prosecution under state criminal statutes. Morgan v. Thomas, 448 F.2d 1356, 1971 U.S. App. LEXIS 8009 (5th Cir. Miss. 1971), cert. denied, 405 U.S. 920, 92 S. Ct. 948, 30 L. Ed. 2d 790, 1972 U.S. LEXIS 3636 (U.S. 1972).

This section [Code 1942 § 1656] does not apply to the scope of punishment for contempt occurring while the court is not sitting, the applicable section under these circumstances is Code 1942, § 2562, applying to offenses for which a penalty is not provided elsewhere by statute. Melvin v. State, 210 Miss. 132, 48 So. 2d 856, 1950 Miss. LEXIS 329 (Miss. 1950).

This section [Code 1942 § 1656] defines the extent of punishment only while the court is sitting, but it does not exclude the power to punish for contempt while the court is not sitting. Melvin v. State, 210 Miss. 132, 48 So. 2d 856, 1950 Miss. LEXIS 329 (Miss. 1950).

Contrition and apology serve only to ameliorate the offense of contempt and to mitigate the punishment. Brannon v. State, 202 Miss. 571, 29 So. 2d 916, 1947 Miss. LEXIS 319 (Miss. 1947).

Provision empowering the court to punish any person for breach of any decree or order of the court, by fine or imprisonment, or both, provides for criminal contempt, while a provision providing that, if any person refuses to obey or perform any order or judgment of the court, the court shall have power to fine and imprison him until the order or judgment is complied with, provides for civil or quasi criminal contempt; the order for imprisonment in the former case is for a past and completed act or omission, is punitory and must be suffered, and its purpose is to preserve the power and vindicate the dignity of the court; in the latter case the punishment is coercive and the contemnor may discharge himself by compliance with the terms of the decree violated, and its purpose is to compel obedience to its decrees. Evans v. Evans, 193 Miss. 468, 9 So. 2d 641, 1942 Miss. LEXIS 116 (Miss. 1942).

2. Contempt, what constitutes.

Chancellor erred in finding a father in contempt because the lack of specificity in the parties' property-settlement agreement, combined with the mother's failure to timely submit the invoices or bills, made it impossible for the father to pay his half of the expenses, and the findings that the father failed to pay child support and that he had overpaid child support were incompatible. Jones v. Jones, 265 So. 3d 195, 2019 Miss. App. LEXIS 58 (Miss. Ct. App. 2019).

Husband was not in contempt for failure to comply with a modified child support order; the order made it virtually impossible for the husband to be held in contempt by allowing him to estimate and subtract college expenses from the monthly support obligation during the summer months. Weeks v. Weeks, 29 So. 3d 80, 2009 Miss. App. LEXIS 860 (Miss. Ct. App. 2009).

Husband was not in contempt for failing to provide a wife with evidence that he had complied with a previous order to maintain the wife as an irrevocable beneficiary on a life insurance policy, because the order only required him to maintain the coverage, not to provide her with proof of coverage. Weeks v. Weeks, 29 So. 3d 80, 2009 Miss. App. LEXIS 860 (Miss. Ct. App. 2009).

Chancery court's refusal to hold the husband in contempt was not error where the wife failed to show that he had not maintained a life insurance policy with her as an irrevocable beneficiary. Weeks v. Weeks, 2008 Miss. App. LEXIS 187 (Miss. Ct. App. Apr. 1, 2008), op. withdrawn, sub. op., 29 So. 3d 80, 2009 Miss. App. LEXIS 860 (Miss. Ct. App. 2009).

Contemnor failed to comply with divorce decree, and a chancellor did not commit manifest error or abuse the chancery court's discretion by incarcerating the contemnor, as the chancellor's decision was supported by the record, which included the chancellor's findings that the contemnor was not credible; further, the divorce decree was not ambiguous, so the contemnor's argument that the contemnor could not obey because of the decree's alleged vagueness was rejected. Stribling v. Stribling, 960 So. 2d 556, 2007 Miss. App. LEXIS 1 (Miss. Ct. App. 2007).

Through the court reporter's repeated failure to complete trial transcripts in a timely manner, the court reporter had a serious negative effect on the efficiency of the court; pursuant to Miss. R. Governing Certified Ct. Reporters IX(A)(2), the court reporter was in willful constructive criminal contempt of the Mississippi Supreme Court for his repeated failure to comply with its orders and the Supreme Court revoked his court reporter certification and ordered him to pay all costs of the the contempt proceedings, including attorney's fees and court reporter's fees. In re Hoppock, 849 So. 2d 1275, 2003 Miss. LEXIS 342 (Miss. 2003).

A chancellor was "manifestly in error" when he found a mother in contempt of court for effectively curtailing the father's court-ordered visitation rights with the parties' daughter by moving to Alaska. The mother never ignored an order of the court since there was nothing in the court order that restricted her from moving to another state. Stevison v. Woods, 560 So. 2d 176, 1990 Miss. LEXIS 205 (Miss. 1990).

A former husband was properly held in contempt of court for failure to pay his former wife monies due for insurance premiums under the parties' original divorce decree, which provided that the former wife was to purchase insurance on behalf of the parties' children and that the former husband was to reimburse the former wife for the premium allocated to the parties' son, in spite of the former husband's arguments that he had obtained health insurance on the children's behalf and should be absolved of any responsibility to reimburse the former wife for any insurance she obtained; the divorce judgment required the former husband to reimburse the former wife for the son's premiums, which the former husband failed to do. Stevison v. Woods, 560 So. 2d 176, 1990 Miss. LEXIS 205 (Miss. 1990).

A father was not in contempt for failure to pay child support under an automatic adjustment clause of a property settlement agreement where the agreement was uncertain in that a genuine dispute existed over the amount owed, over the commencement year of the escalation clause, and over which consumer price index was to be utilized. Wing v. Wing, 549 So. 2d 944, 1989 Miss. LEXIS 443 (Miss. 1989).

Direct criminal contempt is one which takes place in very presence of judge, making all elements of offense personal knowledge, and such may be summarily punished without affidavit, pleading, or formal charges, and no evidence or proof other than court's own knowledge is required to punish such contempt. Varvaris v. State, 512 So. 2d 886, 1987 Miss. LEXIS 2783 (Miss. 1987).

Appellant, who contended that certain household goods and an automobile which had been in the possession of the deceased actually belonged to his wife and his principal, respectively, was not guilty of contempt by filing replevin action against the administratrix, in her individual capacity, to recover possession of the property while the estate was in process of administration. Ballew v. Case, 232 Miss. 183, 98 So. 2d 451, 1957 Miss. LEXIS 458 (Miss. 1957).

Contempt is complete when there is a deliberate purpose or calculation to corrupt administration of justice and that purpose or calculation is accompanied by definite overt act or declaration on part of contemnor, designed to carry that purpose or calculation into effect; and failure of design becomes immaterial, except as it may have some place in considering punishment to be inflicted. Jones v. State, 208 Miss. 762, 45 So. 2d 576, 1950 Miss. LEXIS 294 (Miss. 1950).

One who attempts to bribe or influence decision of juror is guilty of contempt of court, regardless of whether act which constitutes contempt is committed in or out of presence of court, or whether juror is actually sworn on particular case or is only member of panel from which trial jury is to be selected. Jones v. State, 208 Miss. 762, 45 So. 2d 576, 1950 Miss. LEXIS 294 (Miss. 1950).

Person is guilty of contempt of court when he approaches prospective juror, who has been summoned for trial of murder case, at juror's home and advises juror that there are some things in favor of defendant that court will not permit to go to jury, that deceased had been running over defendant, but that fact would be kept from jury and if it wasn't brought out juror should give defendant a break. Jones v. State, 208 Miss. 762, 45 So. 2d 576, 1950 Miss. LEXIS 294 (Miss. 1950).

Where defendant, as a witness in a criminal prosecution, had the appearance of being intoxicated on the witness stand, was chewing gum and smoking a cigarette, and upon retiring from the witness stand faced the district attorney, and in close proximity to the judge's bench, gritted his teeth at the district attorney and scowled at him in a hostile and threatening manner and said "I'll see you when you come down," conduct constituted contempt. Estes v. State, 192 Miss. 400, 6 So. 2d 132, 1942 Miss. LEXIS 28 (Miss. 1942).

Any words or conduct which impedes, embarrasses, obstructs, defeats or corrupts the administration of courts of justice or which to a substantial degree is calculated, or would tend so to do, is a contempt and within the protection of the rule are included all those who are actually a part of the official personnel of the court and when the prohibited language or conduct has a real relation to the discharge by them of official functions appertaining to the court as a court, and so long as the protected person is acting in a lawfully authorized manner; and it is immaterial that the prohibited language or conduct had no successful eventuation. Estes v. State, 192 Miss. 400, 6 So. 2d 132, 1942 Miss. LEXIS 28 (Miss. 1942).

The right of the court to enforce respect for itself begins where the right of the citizen to speak ends, and the line of demarcation is fixed at that point where that which is spoken or published is calculated to obstruct the functioning processes of the court or to impede or impair the efficiency of its machinery then in motion, it being immaterial whether the obstruction is by force, insult, persuasion or disobedience, whether committed by act or word, or whether it affects the judge, the grand or petit jury, or any person made part of its personnel by its process. Sullens v. State, 191 Miss. 856, 4 So. 2d 356, 1941 Miss. LEXIS 195 (Miss. 1941).

The citizens may reasonably criticize even the court or the judges thereof; and the exercise of this right may embarrass the particular functionary; it may depreciate the effectiveness of our legal procedure, yet so long as it pulls up short of the obstruction or impediment of the machinery of the court then in motion, it is free from interference by the court. Sullens v. State, 191 Miss. 856, 4 So. 2d 356, 1941 Miss. LEXIS 195 (Miss. 1941).

A newspaper article, stating that a good show was then being staged in the Hinds County Circuit Court room, that on the stage or screen it would be well worth the price of admission, and that statutes ought to provide an admission fee for court rooms when big human dramas were being staged to help in defraying court expenses, when viewed through the lens of the constitutional provision protecting freedom of speech, did not constitute contempt nor indicate any reasonable tendency to obstruct, embarrass or hinder the court in the proper exercise of its functions. Sullens v. State, 191 Miss. 856, 4 So. 2d 356, 1941 Miss. LEXIS 195 (Miss. 1941).

Filing motion for new trial is not contempt. Ex parte Redmond, 156 Miss. 582, 126 So. 485, 1930 Miss. LEXIS 208 (Miss. 1930).

"Direct contempt" is language or conduct which interferes with orderly administration of justice, and may be an open insult in the presence of the court, or defiance or resistance of the court's authority. Neely v. State, 98 Miss. 816, 54 So. 315, 1910 Miss. LEXIS 128 (Miss. 1910).

Being in the courtroom while drunk does not constitute contempt where judge knows nothing about it and there is no interference with the court. Neely v. State, 98 Miss. 816, 54 So. 315, 1910 Miss. LEXIS 128 (Miss. 1910).

3. —Constructive contempt.

Through the court reporter's repeated failure to complete trial transcripts in a timely manner, the court reporter had a serious negative effect on the efficiency of the court; pursuant to Miss. R. Governing Certified Ct. Reporters IX(A)(2), the court reporter was in willful constructive criminal contempt of the Mississippi Supreme Court for his repeated failure to comply with its orders and the Supreme Court revoked his court reporter certification and ordered him to pay all costs of the the contempt proceedings, including attorney's fees and court reporter's fees. In re Hoppock, 849 So. 2d 1275, 2003 Miss. LEXIS 342 (Miss. 2003).

The limits of this section upon the punishment that may be imposed for direct contempt of court are inapplicable to a constructive contempt. Wood v. State, 227 So. 2d 288, 1969 Miss. LEXIS 1343 (Miss. 1969).

Misrepresentations and disrespectful language contained in a bill of exceptions constitute only a constructive, and not a direct, contempt of court. Wood v. State, 227 So. 2d 288, 1969 Miss. LEXIS 1343 (Miss. 1969).

Where a defendant, found to have committed constructive contempt, was sentenced to six months confinement, and to pay a $500 fine, the offense of which he was convicted was petty, and the court did not commit error in refusing to grant the defendant a trial by jury. Hinton v. State, 222 So. 2d 690, 1969 Miss. LEXIS 1551 (Miss. 1969).

This section [Code 1942 § 1656], in referring to direct contempt, does not exclude the power to punish for constructive contempt. Evers v. State, 241 Miss. 560, 131 So. 2d 653, 1961 Miss. LEXIS 374 (Miss. 1961).

To warrant a conviction for constructive contempt the State must show beyond a reasonable doubt that the conduct of the alleged contemnor would have a reasonably real and substantial tendency to impede the administration of justice. Evers v. State, 241 Miss. 560, 131 So. 2d 653, 1961 Miss. LEXIS 374 (Miss. 1961).

Constructive contempts of court are confined to cases pending at the time of the publication, and a case decided cannot be considered pending because it is subject to be reopened by the court before the end of the term. Evers v. State, 241 Miss. 560, 131 So. 2d 653, 1961 Miss. LEXIS 374 (Miss. 1961).

A statement to the press, after a conviction and sentence of another, characterizing the conviction as "a mockery of justice", "in a courtroom of segregationists apparently resolved to put [defendant, a Negro] legally away", held not to constitute constructive contempt. Evers v. State, 241 Miss. 560, 131 So. 2d 653, 1961 Miss. LEXIS 374 (Miss. 1961).

Evidence that the accused, who had not on any prior occasion been before a court, was in the witness room when another witness came in and announced that the case "was off," whereupon the accused went home and failed to appear at trial time the next morning, but, upon being brought into the court room within 45 minutes, after an attachment was issued, stated that he did not act intentionally, was not sufficient to prove that the accused was guilty of constructive criminal contempt. Ridgeway v. State, 232 Miss. 588, 100 So. 2d 99, 1958 Miss. LEXIS 307 (Miss. 1958).

This section [Code 1942 § 1656] defines the extent of the punishment only while the court is sitting, but it does not exclude the power to punish for contempt while the court is not sitting, and the power to deal with constructive contempts is derived from the inherent power of the court. Young v. State, 230 Miss. 525, 93 So. 2d 452, 1957 Miss. LEXIS 393 (Miss. 1957).

Conduct of defendant which is calculated to influence juror interfering with proper function of jury as part of court, and shows intention to obstruct justice is constructive contempt of court. Yarber v. State, 208 Miss. 806, 45 So. 2d 596, 1950 Miss. LEXIS 302 (Miss. 1950).

Defendant is guilty of constructive contempt of court, when, knowing that juror was on special venire to try criminal case, defendant went to juror's home at night and told juror that he was friend of man to be tried, that his friend had made mistake and if juror would be as light on him as he possibly could without doing anything he thought he should not do, friend would try to repay juror some way or other. Yarber v. State, 208 Miss. 806, 45 So. 2d 596, 1950 Miss. LEXIS 302 (Miss. 1950).

Constructive contempt is any act done which tends to impede, degrade, obstruct, embarrass, interrupt, defeat or corrupt the administration of justice when the act is done beyond the presence of the court. Brannon v. State, 202 Miss. 571, 29 So. 2d 916, 1947 Miss. LEXIS 319 (Miss. 1947); Jones v. State, 208 Miss. 762, 45 So. 2d 576, 1950 Miss. LEXIS 294 (Miss. 1950).

Defendant may be punished for constructive contempt although liable to criminal prosecution for his acts. Durham v. State, 97 Miss. 549, 52 So. 627, 1910 Miss. LEXIS 252 (Miss. 1910).

4. Rights of defendant.

Defendant's due process rights were not violated by a contempt conviction because a trial court, even though not required for direct contempt, gave defendant notice and conducted a hearing where she was allowed to present evidence. In re Hampton, 919 So. 2d 949, 2006 Miss. LEXIS 18 (Miss.), cert. denied, 547 U.S. 1131, 126 S. Ct. 2042, 164 L. Ed. 2d 784, 2006 U.S. LEXIS 3868 (U.S. 2006).

Inability to pay to avoid incarceration is a continuing defense to civil contempt since imprisonment does not accomplish the purpose of the civil contempt decree, but merely punishes. A litigant may be incarcerated for civil contempt for failure to pay a judgment but that litigant is always entitled to offer evidence of inability to pay as a defense, not to the contempt, but to the incarceration. Thus, when a chancellor suspended a contemnor's incarceration and granted her an additional month to pay the judgment, the suspension carried with it the right of the contemnor prior to the hearing to determine whether or not she should be incarcerated and an opportunity to again offer proof on the defense to the incarceration of inability to pay, and it was reversible error for the chancellor to refuse to hear such proof. Stewart v. Wilkinson, 566 So. 2d 210, 1990 Miss. LEXIS 482 (Miss. 1990).

Individual held in prison for civil contempt was improperly held without being afforded opportunity to prove present inability to pay. defendant may avoid judgment of contempt by establishing that he is without present ability to discharge obligation, he has burden of proving his inability to pay, and such showing must be made with particularity and not in general terms. Where contemnor is unable to pay, even if that present inability is due to his misconduct, imprisonment cannot accomplish purpose of civil contempt decree, which is to compel obedience. Jones v. Hargrove, 516 So. 2d 1354, 1987 Miss. LEXIS 2950 (Miss. 1987).

As a matter of due process, a defendant who, during the course of representing himself in a state prosecution, repeatedly engaged in disruptive conduct and denounced, insulted and slandered the trial judge, was entitled to a public trial before another judge on criminal contempt charges entered at the conclusion of the trial, and the trial judge erred in pronouncing the defendant guilty of 11 criminal contempts and sentencing him to 11 to 22 years thereon, after a jury verdict of guilty in the criminal trial, since marked personal feelings were evident on both sides. Mayberry v. Pennsylvania, 400 U.S. 455, 91 S. Ct. 499, 27 L. Ed. 2d 532, 1971 U.S. LEXIS 89 (U.S. 1971).

Where defendant was arrested in October 1948, and he was arraigned at the following November term of county court, at which time he waived a trial by jury but there was a six-month delay between his arraignment and trial in May, 1949, the court in the exercise of its judicial discretion erred in not granting the defendant a trial by jury. Newton v. State, 211 Miss. 644, 52 So. 2d 488, 1951 Miss. LEXIS 394 (Miss. 1951).

Defendant in contempt is entitled to be informed of the nature and cause of the accusation, cannot be compelled to testify against himself, and is presumed innocent until proven guilty beyond reasonable doubt. Ramsay v. Ramsay, 125 Miss. 715, 88 So. 280, 1921 Miss. LEXIS 157 (Miss. 1921).

Punitive sentence may be imposed only after opportunity to defend. Ramsay v. Ramsay, 125 Miss. 715, 88 So. 280, 1921 Miss. LEXIS 157 (Miss. 1921).

Defendant not entitled to jury in contempt proceeding. O'Flynn v. State, 89 Miss. 850, 43 So. 82, 1906 Miss. LEXIS 97 (Miss. 1906).

5. Proceedings for contempt.

The determination of punishment for contempt-fine, imprisonment, both, or neither-is within the discretion of the chancellor; while § 9-1-17 provides that all state courts have the power to imprison any person guilty of contempt, a court is not required to incarcerate any person found in contempt of court. Gebetsberger v. East, 627 So. 2d 823, 1993 Miss. LEXIS 532 (Miss. 1993).

Even where there has been established a prima facie case of contempt, the contemnor may avoid judgment of contempt by establishing that he or she is without present ability to discharge the obligation; if the contemnor raises this as a defense, he or she has the burden of proving his or her inability to pay, and this showing must be made with particularity. Gebetsberger v. East, 627 So. 2d 823, 1993 Miss. LEXIS 532 (Miss. 1993).

Only court contemned has jurisdiction to punish contemnor. Contempt was against Chancery Court of Lowndes County, and not Washington County, where Lowndes Chancery Judges recused themselves from cause, and Chancery Judge from Washington County was designated special judge to hear cause; contempt is affront to court, and not to judge as individual. Culpepper v. State, 516 So. 2d 485, 1987 Miss. LEXIS 2957 (Miss. 1987).

A state trial judge in whose courtroom a contemptuous act was allegedly committed by a civil rights worker, should recuse himself from hearing any later proceedings in the matter of the contempt charge, where it was said in affidavits submitted that the judge had previously made intemperate remarks concerning civil rights litigation generally, and where the judge had been a losing defendant in a civil rights suit filed by the alleged contemnor. Johnson v. Mississippi, 403 U.S. 212, 91 S. Ct. 1778, 29 L. Ed. 2d 423, 1971 U.S. LEXIS 35 (U.S. 1971).

A trial judge can only adjudge a witness in contempt and punish him for false swearing where he finds the witness guilty as a result of his own personal or judicial knowledge of the facts in regard to which the testimony has been given and knows beyond a reasonable doubt that the witness has wilfully and corruptly sworn falsely; otherwise, the procedure prescribed by Code 1942 § 2479, should be followed. McInnis v. State, 202 Miss. 715, 32 So. 2d 444, 1947 Miss. LEXIS 334 (Miss. 1947).

Contempt of court, based on attempt to intimidate witness, is offense against state, and prosecution must be in name of and on behalf of public. Prine v. State, 143 Miss. 231, 108 So. 716, 1926 Miss. LEXIS 260 (Miss. 1926).

Statutes regulating venue of criminal trials generally not applicable to contempt proceedings. Prine v. State, 143 Miss. 231, 108 So. 716, 1926 Miss. LEXIS 260 (Miss. 1926).

Proper procedure, where accused was charged by information with attempted bribery of witness, was taken by citing him, having him answer the charge, and then taking testimony offered in the matter. Durham v. State, 97 Miss. 549, 52 So. 627, 1910 Miss. LEXIS 252 (Miss. 1910).

6. —Information.

Information for contempt need not conclude against peace and dignity of state.

Prine v. State, 143 Miss. 231, 108 So. 716, 1926 Miss. LEXIS 260 (Miss. 1926).

Information for contempt held not void because of failure to state venue. Prine v. State, 143 Miss. 231, 108 So. 716, 1926 Miss. LEXIS 260 (Miss. 1926).

Information for contempt held sufficient. Prine v. State, 143 Miss. 231, 108 So. 716, 1926 Miss. LEXIS 260 (Miss. 1926).

7. —Evidence.

In wife's contempt action against former husband, the wife presented no evidence that the husband issued 23 checks for child support, which the wife did not present to the bank for months, with fraudulent intent; rather, the record showed the wife rebuffed the husband's efforts to make good on the checks, and wanted to file another complaint causing the husband yet more financial problems and emotional distress, and the wife was properly held in contempt. Broome v. Broome, 832 So. 2d 1247, 2002 Miss. App. LEXIS 858 (Miss. Ct. App. 2002).

Lower court judge's ruling finding defendant in direct criminal contempt was proper, although judge admitted that he did not hear exactly what was said prior to defendant's outburst of profanity, but did state that statements of defendant were directed assistant district attorney; court rejected defendant's contention that all evidence presented at hearing indicated that defendant was merely repeating words which policeman said to his son upon his arrest, placing much emphasis on fact that state put no one on stand to refute testimony except assistant district attorney who simply stated that words spoken were directed to another assistant district attorney. Varvaris v. State, 512 So. 2d 886, 1987 Miss. LEXIS 2783 (Miss. 1987).

Trial court did not have sufficient facts before it to properly issue contempt order where Supreme Court's review of record revealed no clear and explicit evidence that order placing defendants in contempt of court was well taken, and judgment of conviction did not contain material facts known to court constituting contempt. Mississippi Asso. of Educators v. Trustees of Jackson Municipal Separate School Dist., 510 So. 2d 123, 1987 Miss. LEXIS 2439 (Miss. 1987).

In civil contempt cases the weight and sufficiency of the evidence must be clear and convincing, and not beyond a reasonable doubt, as required in criminal cases. Masonite Corp. v. International Woodworkers of America, 206 So. 2d 171, 1967 Miss. LEXIS 1242 (Miss. 1967).

Sworn answer in constructive contempt proceedings does not preclude court from receiving evidence therein. O'Flynn v. State, 89 Miss. 850, 43 So. 82, 1906 Miss. LEXIS 97 (Miss. 1906).

8. —Judgment.

It was no error to imprison a father for not paying attorney's fees ordered in contempt proceedings because (1) Miss. Code Ann. § 9-1-17 gave a chancellor such authority, and (2) the father could have avoided a contempt finding by showing inability to pay with particularity. Vincent v. Rickman, 167 So. 3d 245, 2015 Miss. App. LEXIS 125 (Miss. Ct. App. 2015).

Attorney fees, witness fees, and court reporter fees were properly imposed against an attorney who failed to attend a court-ordered hearing; she was properly fined and ordered to serve jail time under Miss. Code Ann. § 9-1-17 for direct contempt, and the fees were awarded in a bifurcated proceeding. In re Hampton, 919 So. 2d 949, 2006 Miss. LEXIS 18 (Miss.), cert. denied, 547 U.S. 1131, 126 S. Ct. 2042, 164 L. Ed. 2d 784, 2006 U.S. LEXIS 3868 (U.S. 2006).

In direct contempt, judgment of conviction should contain material facts known to court constituting contempt. Ex parte Redmond, 156 Miss. 582, 126 So. 485, 1930 Miss. LEXIS 208 (Miss. 1930).

Judgment, in effect reciting court found respondent guilty of contempt, but leaving time and manner to conjecture, could not be maintained. Ex parte Redmond, 156 Miss. 582, 126 So. 485, 1930 Miss. LEXIS 208 (Miss. 1930).

9. —Review.

A chancellor was without authority to give defendants fixed jail sentences and fines, having found the defendants guilty of civil contempt but not criminal contempt and, therefore, the sentences and fines had to be reversed, even though the chancellor was manifestly wrong in finding the defendants not guilty of criminal contempt, since the Supreme Court was powerless to reverse on the chancellor's finding of not guilty of criminal contempt. Hinds County Bd. of Supervisors v. Common Cause of Mississippi, 551 So. 2d 107, 1989 Miss. LEXIS 719 (Miss. 1989).

Where the employer's petition for citation of contempt for violation of a temporary injunction charged that the labor union and its officials had failed and refused to direct the union members to cease participating in a work stoppage and to return to work, the charge was one of civil contempt and the employer was entitled to appeal from a decree of the chancery court which found the defendants were not guilty. Masonite Corp. v. International Woodworkers of America, 206 So. 2d 171, 1967 Miss. LEXIS 1242 (Miss. 1967).

On appeals from a judgment for contempt of court, the Supreme Court will decide for itself the question of contempt. Evers v. State, 241 Miss. 560, 131 So. 2d 653, 1961 Miss. LEXIS 374 (Miss. 1961).

In an appeal from a contempt conviction, the Supreme Court is not held to the rule that it will not reverse unless the chancellor is manifestly wrong, but is empowered to review the case and decide whether there has been an actual contempt of court. Ballew v. Case, 232 Miss. 183, 98 So. 2d 451, 1957 Miss. LEXIS 458 (Miss. 1957).

Court's knowledge in contempt case should be reflected in judgment for purposes of review. Ex parte Redmond, 156 Miss. 582, 126 So. 485, 1930 Miss. LEXIS 208 (Miss. 1930).

Judgment for contempt should be clear and explicit to constitute res judicata, and warrant appellate court in affirming, reversing, annulling, or modifying it. Ex parte Redmond, 156 Miss. 582, 126 So. 485, 1930 Miss. LEXIS 208 (Miss. 1930).

In proceeding for direct contempt, contemnor should be permitted to make statement and apology, and courteously state views to have them incorporated in bill of exceptions. Ex parte Redmond, 156 Miss. 582, 126 So. 485, 1930 Miss. LEXIS 208 (Miss. 1930).

If witness, after testifying in murder case, committed for contempt in presence of jury, reversal will be proper. Walker v. State, 143 Miss. 421, 108 So. 899, 1926 Miss. LEXIS 276 (Miss. 1926).

Request of district attorney to hold witness for contempt, declined by court, not reversible error. Walker v. State, 143 Miss. 421, 108 So. 899, 1926 Miss. LEXIS 276 (Miss. 1926).

Conviction for contempt of court based on attempted intimidation of witness not reversed because attempt failed. Prine v. State, 143 Miss. 231, 108 So. 716, 1926 Miss. LEXIS 260 (Miss. 1926).

RESEARCH REFERENCES

ALR.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous. 12 A.L.R.2d 1059.

Punishment of civil contempt in other than divorce cases by striking pleading or entering default judgment or dismissal against contemner. 14 A.L.R.2d 580.

Bail jumping after conviction, failure to surrender or to appear for sentencing, and the like, as contempt. 34 A.L.R.2d 1100.

Limitation statute applicable to criminal contempt proceedings. 38 A.L.R.2d 1131.

Necessity of affidavit or sworn statement as foundation for constructive contempt. 41 A.L.R.2d 1263.

Assaulting, threatening, or intimidating witness as contempt of court. 52 A.L.R.2d 1297.

Sufficiency of notice to, or service upon, contemnor's attorney in civil contempt proceedings. 60 A.L.R.2d 1244.

Who may institute civil contempt proceedings. 61 A.L.R.2d 1083.

Published article or broadcast as direct contempt of court. 69 A.L.R.2d 676.

Court's power to punish for contempt a child within the age group subject to jurisdiction of juvenile court. 77 A.L.R.2d 1004.

Use of affidavit to establish contempt. 79 A.L.R.2d 657.

Power to base separate contempt prosecutions or punishments on successive refusals to respond to same or similar questions. 94 A.L.R.2d 1246.

False or inaccurate report of judicial proceedings as contempt. 99 A.L.R.2d 440.

Circumstances under which one court can punish a contempt against another court. 99 A.L.R.2d 1100.

Delay in adjudication of contempt committed in the actual presence of court as affecting court's power to punish contemnor. 100 A.L.R.2d 439.

Interference with enforcement of judgment in criminal or juvenile delinquent case as contempt. 8 A.L.R.3d 657.

Release of information concerning forthcoming or pending trial as ground for contempt proceeding or other disciplinary measures against member of the bar. 11 A.L.R.3d 1104.

Attack on judiciary as a whole as indirect contempt. 40 A.L.R.3d 1204.

Defense of entrapment in contempt proceedings. 41 A.L.R.3d 418.

Allowance of attorneys' fees in civil contempt proceedings. 43 A.L.R.3d 793.

Failure of party or his attorney to appear at pretrial conference. 55 A.L.R.3d 303.

Attorney's addressing allegedly insulting remarks to court during course of trial as contempt. 68 A.L.R.3d 273.

Conduct of attorney in connection with making objections or taking exceptions as contempt of court. 68 A.L.R.3d 314.

Refusal to answer questions before state grand jury as direct contempt of court. 69 A.L.R.3d 501.

Power of court to impose standard of personal appearance or attire. 73 A.L.R.3d 353.

Right of injured party to award of compensatory damages or fine in contempt proceedings. 85 A.L.R.3d 895.

Oral court order implementing prior written order or decree as independent basis of charge of contempt within contempt proceedings based on violation of written order. 100 A.L.R.3d 889.

Attorney's failure to attend court, or tardiness, as contempt. 13 A.L.R.4th 122.

Judgment in favor of plaintiff in state court action for defendant's failure to obey request or order to answer interrogatories or other discovery questions. 30 A.L.R.4th 9.

Attorney's use of objectionable questions in examination of witness in state judicial proceeding as contempt of court. 31 A.L.R.4th 1279.

Failure to rise in state courtroom as constituting criminal contempt. 38 A.L.R.4th 563.

Intoxication of witness or attorney as contempt of court. 46 A.L.R.4th 238.

Divorce: propriety of using contempt proceeding to enforce property settlement award or order. 72 A.L.R.4th 298.

Abuse or misuse of contempt power as ground for removal or discipline of judge. 76 A.L.R.4th 982.

Contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order-anticipatory contempt. 81 A.L.R.4th 1008.

Attorney's argument as to evidence previously ruled inadmissible as contempt. 82 A.L.R.4th 886.

Holding jurors in contempt under state law. 93 A.L.R.5th 493.

Violation of automatic stay provisions of 1978 Bankruptcy Code (11 USCS § 362) as contempt of court. 57 A.L.R. Fed. 927.

Attorney's conduct as justifying summary contempt order under Rule 42(a) of the Federal Rules of Criminal Procedure. 58 A.L.R. Fed. 22.

Participation of private counsel for beneficiary of court order allegedly violated by defendant, in prosecution of federal criminal contempt proceeding. 96 A.L.R. Fed. 519.

Am. Jur.

17 Am. Jur. 2d, Contempt §§ 199 et seq.

CJS.

17 C.J.S., Contempt §§ 69 et seq.

§ 9-1-19. Authority of judges of supreme, circuit courts and chancellors and judges of Court of Appeals to grant remedial writs.

The judges of the Supreme and circuit courts and chancellors and judges of the Court of Appeals, in termtime and in vacation, may severally order the issuance of writs of habeas corpus, mandamus, certiorari, supersedeas and attachments, and grant injunctions and all other remedial writs, in all cases where the same may properly be granted according to right and justice, returnable to any court, whether the suit or proceedings be pending in the district of the judge or chancellor granting the same or not. The fiat of such judge or chancellor shall authorize the issuance of the process for a writ returnable to the proper court or before the proper officer; and all such process or writs may be granted, issued and executed on Sunday.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 6(5); 1857, ch. 61, art. 9, ch. 62, art. 3; 1871, §§ 533, 979; 1880, §§ 1904, 2267; 1892, § 916; 1906, § 992; Hemingway's 1917, § 712; 1930, § 742; 1942, § 1657; Laws, 1993, ch. 518, § 11, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

Procedure for petitioning for remedial writs in supreme court, see Miss. R. App. P. 21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Supersedeas.
3. Certiorari.
4. Coram nobis.
5. Prohibition.
6. Injunction.
7. Other writs and remedies.

1. In general.

The procedural availability of remedial writ is proper to promote judicial efficiency and economy with respect to determination of whether the defendant's constitutional right to have trial conducted in the "county where the offense was committed," which was waived at his first trial, may be reinstated after appellate reversal. State v. Caldwell, 492 So. 2d 575, 1986 Miss. LEXIS 2531 (Miss. 1986).

No appeal may be taken from the court's refusal to set aside a transfer made under this section [Code 1942 § 1657]. McMahan v. Adult Membership Boards of Phi Kappa, etc., 244 Miss. 692, 145 So. 2d 692, 1962 Miss. LEXIS 497 (Miss. 1962).

Appeal from transfer in vacation from a circuit to a chancery court held to have been improvidently granted. McMahan v. Adult Membership Boards of Phi Kappa, etc., 244 Miss. 692, 145 So. 2d 692, 1962 Miss. LEXIS 497 (Miss. 1962).

This section [Code 1942 § 1657], providing for remedial writs grantable by supreme and circuit judges, deals solely with original jurisdiction. Alexander v. Johnson, 165 Miss. 721, 138 So. 329, 1931 Miss. LEXIS 321 (Miss. 1931).

2. Supersedeas.

Where attempted appeal from order granting temporary injunction was abortive, Supreme Court judge could not grant writ of supersedeas under this section [Code 1942 § 1657]. Alexander v. Johnson, 165 Miss. 721, 138 So. 329, 1931 Miss. LEXIS 321 (Miss. 1931).

Supreme Court, on motion for supersedeas, will not pass on matters further than necessary to determine motion. Alabama & V. R. Co. v. Jackson & E. R. Co., 129 Miss. 437, 91 So. 902, 1922 Miss. LEXIS 34 (Miss. 1922).

The terms of granting a supersedeas may be fixed by the judge who grants it. Kramer v. Holster, 55 Miss. 243, 1877 Miss. LEXIS 130 (Miss. 1877).

3. Certiorari.

Writ of certiorari to review order of supervisors improperly issued because of failure to show good cause, held not void where judge had jurisdiction to issue it. Hamilton v. Long, 181 Miss. 627, 180 So. 615, 1938 Miss. LEXIS 103 (Miss. 1938).

4. Coram nobis.

Although the refusal by the circuit judge to issue a writ of coram nobis is not an appealable action the Supreme Court will consider the petition in banc in a regular term on its merits as being addressed to the inherent constitutional powers of the court in its revisory capacity with reference to a case pending before it. Wetzel v. State, 225 Miss. 450, 76 So. 2d 188, 76 So. 2d 194, 76 So. 2d 846, 78 So. 2d 774, 84 So. 2d 429, 1954 Miss. LEXIS 607, 1954 Miss. LEXIS 608, 1955 Miss. LEXIS 601, 1955 Miss. LEXIS 602, 1956 Miss. LEXIS 396, 1957 Miss. LEXIS 583 (Miss. 1957).

Refusal of Supreme Court to grant an appeal from trial court's refusal to grant writ of error coram nobis did not leave petitioner without further remedy, since petitioner could apply to judge of Supreme Court for such writ. Buckler v. State, 173 Miss. 350, 161 So. 683, 1935 Miss. LEXIS 224 (Miss. 1935).

Writ of error coram nobis may be granted by judges of Supreme Court, although trial judge refused to grant writ and although writ is not in aid of appellate jurisdiction of Supreme Court, since writ is remedial. Buckler v. State, 173 Miss. 350, 161 So. 683, 1935 Miss. LEXIS 224 (Miss. 1935).

5. Prohibition.

The Supreme Court has original jurisdiction to issue a writ of prohibition. State v. Maples, 402 So. 2d 350, 1981 Miss. LEXIS 2151 (Miss. 1981).

Writ of prohibition issued in vacation without notice by clerk of circuit court, on order of circuit judge of another district, forbidding supervisors to conduct election, held void and not to affect election. Hamilton v. Long, 181 Miss. 627, 180 So. 615, 1938 Miss. LEXIS 103 (Miss. 1938).

Writ of prohibition cannot be used to prevent prosecution for violation of valid ordinance. Hurley v. Corinth, 97 Miss. 396, 52 So. 695, 1910 Miss. LEXIS 264 (Miss. 1910).

One whose business has been closed under prosecution for violation of void ordinance has no other adequate remedy and is entitled to writ of prohibition. Crittenden v. Booneville, 92 Miss. 277, 45 So. 723, 1908 Miss. LEXIS 177 (Miss. 1908).

6. Injunction.

After the circuit court signed an order directing a chancery clerk to issue the injunction, the filing of the petition and order and the docketing of the case in the circuit court confers no jurisdiction on the circuit court. McMahan v. Adult Membership Boards of Phi Kappa, etc., 244 Miss. 692, 145 So. 2d 692, 1962 Miss. LEXIS 497 (Miss. 1962).

Chancery court has jurisdiction to hear in vacation application for a mandatory injunction. Stigall v. Sharkey County, 197 Miss. 307, 20 So. 2d 664, 1945 Miss. LEXIS 291 (Miss. 1945).

If chancellor of district having jurisdiction of receivership improperly refuses injunction writ, judge of Supreme Court on proper showing will issue writ to preserve status quo of case until chancellor passes on merits. Sullivan v. Hughes, 172 Miss. 744, 161 So. 316, 1935 Miss. LEXIS 184 (Miss. 1935).

7. Other writs and remedies.

This section (Code 1871 § 2267) does not confer upon the circuit court power to appoint a receiver in chancery. Alexander v. Manning, 58 Miss. 634, 1881 Miss. LEXIS 13 (Miss. 1881).

RESEARCH REFERENCES

ALR.

Contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order-anticipatory contempt. 81 A.L.R.4th 1008.

§ 9-1-21. Repealed.

Repealed by Laws, 1974, ch. 328, § 2, eff from and after July 1, 1974; and by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-1-21. [Codes, Hutchinson's 1848, ch. 60, art. 1 (175); 1857, ch. 61, art. 14; 1871, § 537; 1880, § 2269; 1892, § 918; 1906, § 994; Hemingway's 1917, § 714; 1930, § 743; 1942, § 1658]

Editor's Notes — Former § 9-1-21 permitted judges of the circuit and county courts, as well as chancellors, to order writs of subpoena duces tecum in vacation.

§ 9-1-23. Judges conservators of peace; must reside in district.

The judges of the Supreme, circuit and county courts and chancellors and judges of the Court of Appeals shall be conservators of the peace for the state, each with full power to do all acts which conservators of the peace may lawfully do; and the circuit judges and chancellors shall reside within their respective districts and the county judges shall reside in their respective counties.

HISTORY: Codes, 1857, ch. 61, art. 15; 1871, § 532; 1880, § 2268; 1892, § 917; 1906, § 993; Hemingway's 1917, § 713; 1930, § 740; 1942, § 1655; Laws, 1993, ch. 518, § 12, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

§ 9-1-25. Judges not to practice law.

It shall not be lawful for any judge of the Supreme Court, Court of Appeals or a judge of the circuit court, or a chancellor to exercise the profession or employment of an attorney or counsellor at law, or to be engaged in the practice of law; and any person offending against this prohibition shall be guilty of a high misdemeanor and be removed from office; but this shall not prohibit a chancellor or circuit judge or a judge of the Court of Appeals from practicing in any of the courts for a period of six (6) months from the time such judges or chancellors assume office so far as to enable them to bring to a conclusion cases actually pending when they were appointed or elected in which such chancellor or judge was then employed, nor shall a judge of the Supreme Court be hindered from appearing in the courts of the United States in any case in which he was engaged when he was appointed or elected judge.

HISTORY: Codes, Hutchinson's 1848, ch. 26, art. 3 (14); 1857, ch. 9, art. 4; 1871,

§ 2247; 1880, § 2401; 1892, § 213; 1906, § 219; Hemingway's 1917, § 193; 1930, § 3696; 1942, § 8668; Laws, 1914, ch. 235; Laws, 1993, ch. 518, § 13, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Election and terms of chancellor, see § 9-5-1.

Election and terms of judge of the circuit court, see § 9-7-1.

County judges being prohibited from practicing law, see § 9-9-9.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evidence.
3. Discipline.

1. In general.

Where a county judge had not willfully abused the privilege of filing new complaints while in office, the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324, 2004 Miss. LEXIS 780 (Miss. 2004).

Since, pursuant to Miss Const of 1890, § 175, the only action a grand jury can take after investigating the conduct of a public officer is to return a presentment or indictment, it was necessary to expunge from a grand jury report all references to the nonjudicial conduct of a judge whose indictment was barred by the statute of limitations. Petition of Moore, 336 So. 2d 736, 1976 Miss. LEXIS 1520 (Miss. 1976).

2. Evidence.

Where a judge became involved in lease negotiations pertaining to a barge landing site for a county landfill, and advised one party to the lease on the benefits of dealing with the landfill and drafting the lease agreement himself, he violated Canons 1, 2 A, 2.B, 3 A(1), 3 C, 5 C(1) and 5 F, as well as §§ 9-1-25 and 23-15-975. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162, 1998 Miss. LEXIS 436 (Miss. 1998).

3. Discipline.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 1; the Supreme Court of Mississippi suspended him for 180 days without compensation. The judge had a pattern of misconduct, as he had been disciplined in the past for practicing law as a judge in violation of Miss. Code Ann. §§ 9-1-25, § 9-9-9. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314, 2008 Miss. LEXIS 69 (Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

A judge has six months to bring to a conclusion any cases from their prior private practice pending at the time of their election or appointment as Chancellor. After that six month period has expired further representation of a client would result in violation of this Section. Patterson, July 20, 1995, A.G. Op. #95-0438.

The statute prohibits an attorney from representing new social security cases and new bankruptcy cases while serving as a Justice of the Mississippi Supreme Court and also prevents the attorney from representing new federal cases in federal court. Easley, Jr., Feb. 1, 2001, A.G. Op. #2001-0044.

The statute prohibits a Justice of the Mississippi Supreme Court from practicing law before an administrative agency after assuming office; however, the Justice may appear in a federal court in a case in which he was engaged when elected or appointed to the Supreme Court. Easley, Jr., Feb. 1, 2001, A.G. Op. #2001-0044.

A Justice of the Mississippi Supreme Court may represent himself in a lawsuit in state courts as long as such representation does not constitute representation of any other party, individual, or entity, e.g., partnerships or professional corporations. Easley, Jr., Feb. 1, 2001, A.G. Op. #2001-0044.

A Mississippi Supreme Court Justice is prohibited from practicing law after taking office with the exception of continuing any representation of clients whose cases are in a federal court; however, a Supreme Court Justice may represent himself in a matter by presenting a motion to a court for payment of services rendered prior to becoming a Supreme Court Justice. Easley, Jr., Apr. 23, 2001, A.G. Op. #01-0216.

Once an attorney has concluded his or her service as a special judge, the prohibition of this section would no longer apply. Therefore, the attorney may return to the practice of law in all cases in which the attorney was designated as counsel of record before his selection as special judge. The length of the appointment's term does not change this conclusion. Hurst, May, 21, 2004, A.G. Op. 04-0180.

A practicing attorney selected as a special judge for service on the Supreme Court may remain of counsel in all cases presently pending in the state and federal courts. However, pursuant to this section which applies to any judge of the Supreme Court, a special judge may not be engaged in the practice of law and, therefore, may not practice in any of the state courts during his tenure as a special judge. A special judge may, pursuant to the same statute, practice in the federal courts in any case in which he or she was engaged when appointed. Hurst, May, 21, 2004, A.G. Op. 04-0180.

RESEARCH REFERENCES

ALR.

Validity and application of state statute prohibiting judge from practicing law. 17 A.L.R.4th 829.

Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 A.L.R.4th 700.

Removal or discipline of state judge for neglect of, or failure to perform, judicial duties. 87 A.L.R.4th 727.

§ 9-1-27. Officers pro tempore to be appointed in certain cases.

Whenever a vacancy shall exist in the office of clerk of any court, sheriff, or coroner and the vacancy shall not have been filled on or before the commencement of the term of any court which the clerk, sheriff, or coroner is required to attend, or if the clerk, sheriff, or coroner shall be absent, deceased, become unable, or refuse to discharge his duties, or be on trial therein, the court, or the judge or judges thereof, shall have power to appoint a suitable person to discharge the duties of clerk, sheriff, or coroner pro tempore, who shall take the oath required by law, and perform the duties and receive the emoluments of the office to which he is appointed, until the proper incumbent shall be duly qualified or return to his duties.

HISTORY: Codes, Hutchinson's 1848, ch. 27, class 2, art. 4, class 3, art. 1 (11);

1857, ch. 62, art. 14; 1871, § 983; 1880, § 2279; 1892, § 928; 1906, § 1004; Hemingway's 1917, § 724; 1930, § 748; 1942, § 1663.

Cross References — Appointment of a temporary coroner, see § 9-1-27.
Appointment of a coroner pro tempore, see § 41-61-57.
Business hours of the clerk's office, see Miss. R. Civ. P. 77.

JUDICIAL DECISIONS

1. In general.

An appointment under the provisions of the act for the appointment of a clerk pro tempore in case the clerk should be at any time unable from sickness or any unavoidable cause to attend the court, is not limited to the term of the court. Cocke v. Halsey, 41 U.S. 71, 10 L. Ed. 891, 1842 U.S. LEXIS 348 (U.S. 1842).

The court has no authority to remove a clerk or suspend him (unless under the section [Code 1942 § 1663] as now amended he be on trial) from office except upon conviction for an offense which subjects him to removal. Ex parte Lehman, 60 Miss. 967, 1883 Miss. LEXIS 49 (Miss. 1883).

OPINIONS OF THE ATTORNEY GENERAL

When a sheriff is so ill as to be unable to perform his official duties, the circuit court may appoint a suitable person to discharge the sheriff's duties until such time as the incumbent is able to return, and the county board may make a recommendation to the court in regard to such appointment. Farese, Apr. 6, 2001, A.G. Op. #01-0080.

§ 9-1-29. Court to control clerk's office.

Each court shall have control over all proceedings in the clerk's office, and such control shall be exercised in a manner consistent with the Mississippi Rules of Civil Procedure.

HISTORY: Codes, Hutchinson's 1848, ch. 54, art. 2 (22); 1857, ch. 61, art. 26, ch. 62, art. 9; 1871, §§ 542, 982; 1880, § 2274; 1892, § 924; 1906, § 1000; Hemingway's 1917, § 720; 1930, § 749; 1942, § 1664; Laws, 1978, ch. 425, § 2; Laws, 1991, ch. 573, § 4, eff from and after July 1, 1991.

Cross References — Clerks of Supreme Court, see §§ 9-3-13 et seq.
Clerks of chancery court, see §§ 9-5-131 et seq.
Clerks of circuit court, see §§ 9-7-121 et seq.
Administrative Office of Courts to assist court clerks, see § 9-21-3.

JUDICIAL DECISIONS

1. In general.

The circuit court has ample power to promulgate rules pertaining to appeals to it from the county court, and when its rules are not complied with the order dismissing the appeal will be affirmed, in the absence of evidence that this act constituted an abuse of the court's discretion. Mississippi State Highway Com. v. McGrew, 206 So. 2d 334, 1968 Miss. LEXIS 1572 (Miss. 1968).

Whether dismissal of bill on plaintiff's request during last 1917 vacation was erroneous, properly presented by exceptions at January term 1918. Northern v. Scruggs, 118 Miss. 353, 79 So. 227, 1918 Miss. LEXIS 87 (Miss. 1918).

OPINIONS OF THE ATTORNEY GENERAL

Chancery Judge is not authorized to order employees to be provided to Office of Chancery Clerk. O'Neal Sept. 1, 1993, A.G. Op. #93-0605.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Clerks of Court §§ 23 et seq.

CJS.

21 C.J.S., Clerks of Courts §§ 327, 328.

§ 9-1-31. Records of office of clerk delivered to successor.

When the office of clerk of any court shall become vacant, the records, papers, books, stationery, and everything belonging thereto, shall be delivered to the successor in office by any person having the same, on demand; and if any person having such records, papers, books, stationery, or other things shall refuse to deliver the same on demand to the person entitled thereto, he shall be liable for all damages sustained by any person aggrieved thereby; and in case of a refusal or a detention of the same, or of any part thereof, after demand made, the court may compel the delivery thereof, by fine and imprisonment at discretion, for contempt of court; and the court, or judge in vacation, may order process to be issued for the seizure of such records, papers, books, stationery, and other things, and for the delivery thereof to the successor in office.

HISTORY: Codes, Hutchinson's 1848, ch. 27, class 2, art. 1 (14), class 3, art. 1 (12); 1857, ch. 61, art. 18, ch. 62, art. 18; 1871, §§ 555, 994; 1880, § 2280; 1892, § 929; 1906, § 1005; Hemingway's 1917, § 725; 1930, § 754; 1942, § 1669.

§ 9-1-33. Minutes of Supreme Court, circuit, chancery and county courts and Court of Appeals.

The minutes of the proceedings of the Supreme, circuit, chancery and county courts and the Court of Appeals shall be entered by the clerk of each, respectively, in the minute book of the court, against the next sitting of the court, if practicable, when the same shall be read in open court; and when corrected shall be signed – the minutes of the Supreme Court by the Chief Justice or presiding judge, of the Court of Appeals by the Chief Judge or presiding judge, of the circuit court by the circuit judge, of the chancery court by the chancellor, and of the county court by the county judge; and on the last day of the term, or within ten (10) days thereafter, the minutes shall be drawn up, read and signed.

Whenever by inadvertence said minutes and proceedings may remain unsigned or the judge of said court dies before signing the minutes, the succeeding judge or judges of said court may, in their discretion, examine into said unsigned minutes and ascertain as to the correctness thereof, and after same shall have been read in open court, and if the court is of the opinion that same are true and correct, then the said minutes may be signed and adopted by said judge or judges.

HISTORY: Codes, Hutchinson's 1847, ch. 53, art. 2 (159), ch. 54, art. 2 (54); 1857, ch. 61, art. 23, ch. 62, art. 15; 1871, §§ 543, 991; 1880, § 2282; 1892, § 931; 1906, § 1007; Hemingway's 1917, § 727; 1930, § 750; 1942, § 1665; Laws, 1962, ch. 307; Laws, 1980, ch. 393; Laws, 1993, ch. 518, § 14, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Maintenance of the minute book, see Miss. R. Civ. P. 79.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Signing minutes.
3. —Who may sign.
4. —Time for signing.
5. —Signing after term, effect of.
6. Impeachment of minutes.
7. —Evidence.

1. In general.

The day after rendition of a judgment at law is the date of the pronouncement of the judgment by the court at the conclusion of the trial and this day is determined by the entry of the judgment and the minutes of the court. Duncan v. Brock, 216 Miss. 406, 62 So. 2d 562, 1953 Miss. LEXIS 650 (Miss. 1953).

The date when a judgment is rendered is determined by the entry of the judgment on the minutes of the court. Johnson v. Mississippi Power Co., 189 Miss. 67, 196 So. 642, 1940 Miss. LEXIS 111 (Miss. 1940).

Order extending court term must be entered on minutes signed by judge before expiration of extended term. Watson v. State, 166 Miss. 194, 146 So. 122, 1933 Miss. LEXIS 335 (Miss. 1933).

Judgment is void where entered by the clerk 30 days after adjournment. Hammond-Gregg Co. v. Bradley, 119 Miss. 72, 80 So. 489, 1918 Miss. LEXIS 12 (Miss. 1918).

2. Signing minutes.

The proper interpretation of this section as now written is that the judgments or decrees rendered and entered on the unsigned minutes are either voidable or valid, as the case may be, depending on the determination of the judge or chancellor as to whether the minutes are correct and should be signed. Eubanks v. W. H. Hodges & Co., 207 So. 2d 640, 1968 Miss. LEXIS 1626, 1968 Miss. LEXIS 1627 (Miss. 1968).

Where the trial judge before the expiration of a term extended the same for an additional term during which the judgment of conviction in question was entered, and thereafter ordered a second extension, but he did not sign the minutes either during or on the last day of the regular term or at the beginning or ending of the first extended term, or for the second extended term, the judgment of conviction was invalid, under the decision in Jackson v. Gordon (1943) 194 Miss 268, 11

So. 2d 901; Patton v. State (1943) 194 Miss 757, 12 So. 2d 383; Tucker v. State (Miss. Ward v. State, 12 So. 2d 526 (Miss. 1943); Patton v. State, 12 So. 2d 537 (Miss. 1943); Bell v. State, 12 So. 2d 784 (Miss. 1943).

Order extending the regular term of court of a circuit court was invalid where the presiding judge did not sign the minutes day by day throughout the term, nor did he sign the minutes on the last day of the term, and a signing of the minutes thereafter was a signing thereof in vacation. Jackson v. Gordon, 194 Miss. 268, 11 So. 2d 901, 1943 Miss. LEXIS 49 (Miss. 1943), but see, De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

The duty of trial judge to sign minutes within term time is function which appertains to general administration of his office, and is not one which litigant is required to stand by and watch as to whether duty has been performed. Williams v. State, 179 Miss. 419, 174 So. 581, 1937 Miss. LEXIS 23 (Miss. 1937).

Writing or entry on court's minute book does not become part of minutes until they are read and signed by presiding judge. Watson v. State, 166 Miss. 194, 146 So. 122, 1933 Miss. LEXIS 335 (Miss. 1933).

3. —Who may sign.

Where a presiding judge, who died during the term, would have had the right to sign all the minutes of the term of the last day thereof, or at any time before the adjournment of the term, it necessarily followed that his successor in office was vested with the same power and authority where he was appointed and qualified before the adjournment of the term commenced by his predecessor. Grant v. State, 189 Miss. 341, 197 So. 826, 1940 Miss. LEXIS 124 (Miss. 1940).

4. —Time for signing.

Signing by the presiding judge of the minutes at the end of an invalid extended term could not be considered as a correction of the minutes nunc pro tunc, since there is no right or authority in a presiding judge to sign the minutes of his court after the term has expired by operation of law and is in vacation. Jackson v. Gordon, 194 Miss. 268, 11 So. 2d 901, 1943 Miss. LEXIS 49 (Miss. 1943), but see, De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

While the entry of the minutes each day by the clerk of court against the next sitting of the court is contemplated, and is to be commended as good practice, it is not made mandatory that they shall be signed until the last day of the term, but it is mandatory that the same shall be signed before the adjournment of the court. Grant v. State, 189 Miss. 341, 197 So. 826, 1940 Miss. LEXIS 124 (Miss. 1940).

Statutory provision that court's minutes shall be drawn up, read, and signed on last day of term before adjournment is mandatory, and requires signature thereof before expiration of term fixed by law or order calling special term. Watson v. State, 166 Miss. 194, 146 So. 122, 1933 Miss. LEXIS 335 (Miss. 1933).

Presiding judge has no right to sign court minutes after term expires by operation of law. Watson v. State, 166 Miss. 194, 146 So. 122, 1933 Miss. LEXIS 335 (Miss. 1933).

5. —Signing after term, effect of.

Where the trial judge prior to the expiration of the term signed an order to extend the term, and thereafter signed another order for a second extension, but failed to sign the minutes either from day to day or at the end of the regular term, or at the beginning or ending of the first extended term, or for the second extended term, and his signature did not appear on the minutes when the validity of the proceedings were challenged during the second extended term, judgment of conviction entered during the first extended term was invalid. Patton v. State, 194 Miss. 757, 12 So. 2d 383, 1943 Miss. LEXIS 67 (Miss. 1943); Tucker v. State, 12 So. 2d 524 (Miss. 1943); Ward v. State, 12 So. 2d 526 (Miss. 1943); Patton v. State, 12 So. 2d 537 (Miss. 1943); Bell v. State, 12 So. 2d 784 (Miss. 1943).

Where circuit judge failed to sign any of minutes until after expiration of term, and therefore record did not legally show that any term of court had been held, defect could be raised for first time on appeal. Williams v. State, 179 Miss. 419, 174 So. 581, 1937 Miss. LEXIS 23 (Miss. 1937).

Attempted extension of court term, at which defendant was indicted, by order entered on minutes not signed by presiding judge before expiration of term, was ineffective, and trial of defendant thereafter was nullity. Watson v. State, 166 Miss. 194, 146 So. 122, 1933 Miss. LEXIS 335 (Miss. 1933).

6. Impeachment of minutes.

Judicial record complete on its face not subject to impeachment; judgment rendered day court adjourned entered several days later on blank page in front of place where judge signed minutes finally adjourning the court, in absence of showing of irregularity or fraud such fact cannot be shown in chancery suit to declare the judgment void. Childress v. Carley, 92 Miss. 571, 46 So. 164, 1908 Miss. LEXIS 220 (Miss. 1908).

7. —Evidence.

Exclusion of circuit clerk's testimony that court's minutes, on which order was entered extending special term at which defendant was indicted, had not been signed when defendant's objections to trial after expiration of such term were heard, held prejudicial error. Watson v. State, 166 Miss. 194, 146 So. 122, 1933 Miss. LEXIS 335 (Miss. 1933).

Circuit court minutes cannot be contradicted by parol. Williams v. State, 125 Miss. 347, 87 So. 672, 1921 Miss. LEXIS 129 (Miss. 1921).

Parol evidence is inadmissible to contradict the minutes as to date of adjournment. Jones v. Williams, 62 Miss. 183, 1884 Miss. LEXIS 46 (Miss. 1884).

The question of priority between two judgments in the same court is to be determined by the minutes and evidence aliunde is inadmissible to show that the one last entered was the first rendered. Johnson v. Edde, 58 Miss. 664, 1881 Miss. LEXIS 21 (Miss. 1881).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

CJS.

21 C.J.S., Courts §§ 246 et seq.

§ 9-1-35. Seal of court.

The clerk of the Supreme Court and of the Court of Appeals, at the expense of the state, and the clerk of every circuit and chancery court, at the expense of the county, shall keep a seal, with the style of the court around the margin and the image of an eagle in the center.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 2 (188), ch. 54, art. 2 (64); 1857, ch. 61, art. 19, ch. 62, art. 19; 1871, §§ 556, 1273; 1880, §§ 1410, 2275; 1892, § 925; 1906, § 1001; Hemingway's 1917, § 721; 1930, § 752; 1942, § 1667; Laws, 1993, ch. 518, § 15, eff from and after date said ch. 518, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under

Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

§ 9-1-36. Office allowance for circuit judges, chancellors and certain staff; procedure to employ certain staff members; title to tangible property; reports; adoption of rules and regulations.

(1) Each circuit judge and chancellor shall receive an office operating allowance for the expenses of operating the office of the judge, including retaining a law clerk, legal research, stenographic help, stationery, stamps, furniture, office equipment, telephone, office rent and other items and expenditures necessary and incident to maintaining the office of judge. The allowance shall be paid only to the extent of actual expenses incurred by the judge as itemized and certified by the judge to the Supreme Court in the amounts set forth in this subsection; however, the judge may expend sums in excess thereof from the compensation otherwise provided for his office. No part of this expense or allowance shall be used to pay an official court reporter for services rendered to said court.

(a) Until July 1, 2008, the office operating allowance under this subsection shall be not less than Four Thousand Dollars ($4,000.00) nor more than Nine Thousand Dollars ($9,000.00) per annum.

(b) From and after July 1, 2008, the office operating allowance under this subsection shall be Nine Thousand Dollars ($9,000.00) per annum.

(2) In addition to the amounts provided for in subsection (1), there is hereby created a separate office allowance fund for the purpose of providing support staff to judges. This fund shall be managed by the Administrative Office of Courts.

(3) Each judge who desires to employ support staff after July 1, 1994, shall make application to the Administrative Office of Courts by submitting to the Administrative Office of Courts a proposed personnel plan setting forth what support staff is deemed necessary. The plan may be submitted by a single judge or by any combination of judges desiring to share support staff. In the process of the preparation of the plan, the judges, at their request, may receive advice, suggestions, recommendations and other assistance from the Administrative Office of Courts. The Administrative Office of Courts must approve the positions, job descriptions and salaries before the positions may be filled. The Administrative Office of Courts shall not approve any plan which does not first require the expenditure of the funds in the support staff fund for compensation of any of the support staff before expenditure is authorized of county funds for that purpose. Upon approval by the Administrative Office of Courts, the judge or judges may appoint the employees to the position or positions, and each employee so appointed will work at the will and pleasure of the judge or judges who appointed him but will be employees of the Administrative Office of Courts. Upon approval by the Administrative Office of Courts, the appointment of any support staff shall be evidenced by the entry of

an order on the minutes of the court. When support staff is appointed jointly by two (2) or more judges, the order setting forth any appointment shall be entered on the minutes of each participating court.

(4) The Administrative Office of Courts shall develop and promulgate minimum qualifications for the certification of court administrators. Any court administrator appointed on or after October 1, 1996, shall be required to be certified by the Administrative Office of Courts.

(5) Support staff shall receive compensation pursuant to personnel policies established by the Administrative Office of Courts; however:

(a) From and after July 1, 1994, the Administrative Office of Courts shall allocate from the support staff fund an amount of Forty Thousand Dollars ($40,000.00) per fiscal year per judge for whom support staff is approved for the funding of support staff assigned to a judge or judges; and

(b) From and after July 1, 2008, the Administrative Office of Courts shall allocate from the support staff fund an amount of Forty Thousand Dollars ($40,000.00), in addition to the amount provided in paragraph (a). Of the amount provided in this paragraph (b), each judge shall utilize an amount sufficient to ensure that judge has access to the services of a law clerk, whether hired by the judge separately or in concert with another judge. Any excess funds remaining upon satisfaction of this requirement may be used for any other support staff as defined in this section. Any employment pursuant to this subsection shall be subject to the provisions of Section 25-1-53.

The Administrative Office of Courts may approve expenditure from the fund for additional equipment for support staff appointed pursuant to this section in any year in which the allocation per judge is sufficient to meet the equipment expense after provision for the compensation of the support staff.

(6) For the purposes of this section, the following terms shall have the meaning ascribed herein unless the context clearly requires otherwise:

(a) "Judges" means circuit judges and chancellors, or any combination thereof;

(b) "Support staff" means court administrators, law clerks, legal research assistants or secretaries, or any combination thereof, but shall not mean school attendance officers;

(c) "Compensation" means the gross salary plus all amounts paid for benefits or otherwise as a result of employment or as required by employment; provided, however, that only salary earned for services rendered shall be reported and credited for Public Employees' Retirement System purposes. Amounts paid for benefits or otherwise, including reimbursement for travel expenses, shall not be reported or credited for retirement purposes;

(d) "Law clerk" means a clerk hired to assist a judge or judges who has a law degree or who is a full-time law student who is making satisfactory progress at an accredited law school.

(7) Title to all tangible property, excepting stamps, stationery and minor expendable office supplies, procured with funds authorized by this section, shall be and forever remain in the State of Mississippi to be used by the circuit

judge or chancellor during the term of his office and thereafter by his successors.

(8) Any circuit judge or chancellor who did not have a primary office provided by the county on March 1, 1988, shall be allowed an additional Four Thousand Dollars ($4,000.00) per annum to defray the actual expenses incurred by the judge or chancellor in maintaining an office; however, any circuit judge or chancellor who had a primary office provided by the county on March 1, 1988, and who vacated the office space after that date for a legitimate reason, as determined by the Department of Finance and Administration, shall be allowed the additional office expense allowance provided under this subsection. The county in which a circuit judge or chancellor sits is authorized to provide funds from any available source to assist in defraying the actual expenses to maintain an office.

(9) The Supreme Court, through the Administrative Office of Courts, shall submit to the Department of Finance and Administration the itemized and certified expenses for office operating allowances that are directed to the court pursuant to this section.

(10) The Supreme Court, through the Administrative Office of Courts, shall have the power to adopt rules and regulations regarding the administration of the office operating allowance authorized pursuant to this section.

HISTORY: Codes, 1942, § 4175.6; Laws, 1972, ch. 398, §§ 1, 2, 3; Laws, 1978, ch. 531, § 1; Laws, 1988, ch. 528, § 1; Laws, 1990, ch. 485, § 1; Laws, 1991, ch. 373, § 1; Laws, 1993, ch. 518, § 42; Laws, 1994, ch. 506, § 1; Laws, 1996, ch. 414, § 1; Laws, 1999, ch. 524, § 1; Laws, 2004, ch. 534, § 1; Laws, 2007, ch. 557, § 3; brought forward without change, Laws, 2010, ch. 561, § 4, eff from and after July 1, 2010.

Editor's Notes — Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

Cross References — Court reporters and court reporting generally, see §§ 9-13-1 et seq.

Allowing judges and chancellors to apply their expense allowances to court administration special fund, see § 9-17-5.

OPINIONS OF THE ATTORNEY GENERAL

Section 9-1-36(4) is the only provision for reimbursement of expenses to a legal research assistant employed by a circuit judge or chancellor, and the board of supervisors may not pay such travel expenses. Jones, December 20, 1995, A.G. Op. #95-0765.

Section 9-1-36(8) does not contemplate payments by a county for expenses in maintaining a private office by a circuit judge or chancellor. Shands, Mar. 5, 2003, A.G. Op. #03-0049.

There is no authority for counties within a circuit court district to supplement by pro rata share the salaries of court support staff. Gordon, Oct. 17, 2003, A.G. Op. 03-0472.

County approval is required before a position is submitted for approval by the Administrative Office of Courts at a salary which would increase the county's supplemental payment obligations. Williams, Apr. 2, 2004, A.G. Op. 04-0106.

This section allows a county to provide funds for expenses in maintaining a private office by a circuit judge or chancellor if no office is provided by the county. The term "actual expenses" means expenses actually incurred by the circuit judge or chancellor in maintaining an office. Shands, Aug. 27, 2004, A.G. Op. 04-0433.

Counties within a judicial district do not have a responsibility to pay for the office expenses of a circuit judge or chancellor. However, each county within the judicial district may provide funds to assist in defraying the actual expenses to maintain an office. Shands, Aug. 27, 2004, A.G. Op. 04-0433.

Shands, Aug, 27, 2004, A.G. Op. 04-0433 withdrawn. Littlejohn, Dec. 9, 2004, A.G. Op. 04-0596.

§ 9-1-37. Allowance for stationery.

The circuit, chancery and county courts shall make allowance to the clerks thereof of all needful sums for supplying the offices and courtrooms with necessary stationery, furniture, books, presses, seals, and other things necessary for the same, and for the safe-keeping of the books, records, and papers belonging thereto; and such allowance shall be certified to the board of supervisors. Provided, however, that in no event shall said circuit, chancery or county courts be allowed to purchase furniture in excess of five hundred dollars for any one year without first securing the approval of the board of supervisors of the county.

HISTORY: Codes, Hutchinson's 1848, ch. 27, class 2, art. 1 (157), class 3, art. 1 (52); 1857, ch. 61, art. 27, ch. 62, art. 19; 1871, §§ 541, 985; 1880, § 2276; 1892, § 926; 1906, § 1002; Hemingway's 1917, § 722; 1930, § 753; 1942, § 1668; Laws, 1936, ch. 252.

JUDICIAL DECISIONS

1. In general.

The circuit and chancery courts are respectively empowered under this section [Code 1942 § 1668], in case the board of supervisors have failed to do so, to procure the necessary record books, stationery, furniture, etc., belonging to the court exercising the power, but have no authority to procure other such articles for the county. Board of Sup'rs v. Hughes, 83 Miss. 195, 35 So. 424 (Miss. 1903).

The clerk should first ask the court to make the allowance, and if the application is approved in whole or in part, the court should direct the court what to purchase, limiting the sum to be expended. Board of Sup'rs v. Hughes, 83 Miss. 195, 35 So. 424 (Miss. 1903).

The court should allow or disallow the bill for supplies presented by the clerk rather than certify the same to the board of supervisors to be passed on. State v. Lovell, 70 Miss. 309, 12 So. 341, 1892 Miss. LEXIS 122 (Miss. 1892).

OPINIONS OF THE ATTORNEY GENERAL

All requests made by the chancery or circuit courts for equipment or supplies must be presented first to the board of supervisors; only if and when the board of supervisors fails to procure necessary items may the court order the court clerk to procure those items, and such court order has the legal effect of binding the board to follow that order. Bryant, Aug. 1, 1997, A.G. Op. #97-0405.

§ 9-1-38. Certain judicial records exempt from public access requirements.

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3, which are developed among judges and among judges and their aides, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

HISTORY: Laws, 1983, ch. 424, § 10, eff from and after July 1, 1983.

Cross References — Mississippi Public Records Act, see § 25-61-1 et seq.

Exemption from Mississippi Public Records Act of 1983 of those records judicially determined to be exempt, see § 25-61-11.

§ 9-1-39. Clerks of circuit, chancery and county courts in separate judicial districts in Harrison County.

In Harrison County, a county having two judicial districts, the clerks of the circuit and chancery courts of said county shall be the clerks of the respective circuit and chancery courts in each of the districts aforesaid and the circuit clerk shall additionally be the clerk of the county court as provided by law, in each of said districts and they shall keep offices both at Gulfport and Biloxi, in which all books, records, dockets, papers and documents belonging to each of the courts of said district shall be kept respectively; and all dockets, records, papers and books required to be kept by law by clerks of the circuit, chancery and county courts in this state shall be kept by each of said clerks respectively at Gulfport and Biloxi, for each of said districts; and the enrollment of a judgment or decree in the district where the same may be rendered or obtained, shall be a lien on all property of the person against whom the same may be rendered within the district where so enrolled.

HISTORY: Codes, 1942, § 2910-05; Laws, 1962, ch. 257, § 5, eff from and after passage (approved June 1, 1962).

Cross References — Duties of clerk of chancery court, see §§ 9-5-135, 9-5-137.

Oath and bond of clerk of circuit court, see § 9-7-121.

§ 9-1-41. Reasonableness of attorneys' fees; evidence.

In any action in which a court is authorized to award reasonable attorneys' fees, the court shall not require the party seeking such fees to put on proof as to the reasonableness of the amount sought, but shall make the award based on the information already before it and the court's own opinion based on experience and observation; provided however, a party may, in its discretion, place before the court other evidence as to the reasonableness of the amount of the award, and the court may consider such evidence in making the award.

HISTORY: Laws, 1990, ch. 393, § 1, eff from and after passage (approved March 13, 1990).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application.

1. In general.

In a case where there are many billable hours that the trial court is unable to observe or lacks knowledge of, it is incumbent upon the party requesting attorney fees to place before the trial court evidence as to the reasonableness of the amount of the award, so that the record as a whole can support the award of attorney's fees. Speights v. Speights, 126 So. 3d 76, 2013 Miss. App. LEXIS 743 (Miss. Ct. App. 2013).

Standard of review for award of attorneys' fees is abuse of discretion, and such awards must be supported by credible evidence. Regency Nissan v. Jenkins, 678 So. 2d 95, 1996 Miss. LEXIS 435 (Miss. 1996).

Award of $7,500 in attorney fees to successful plaintiff in action against used car dealer for violation of Odometer Disclosure Act was not abuse of discretion; plaintiff supported his claim with sixteen pages of itemized expenses, plaintiff's attorney billed 82.50 hours at $140 per hour plus expenses of $164.91 for total of $11,714.91, and amount was adjusted downward by trial court. Regency Nissan v. Jenkins, 678 So. 2d 95, 1996 Miss. LEXIS 435 (Miss. 1996).

2. Application.

Chancery court did not abuse its discretion in by awarding a father attorney's fees given the lengthy procedural history of the case and the mother's persistent contempt of court; An award of $ 5,000 was not an unreasonable amount for prosecution of the contempt action, which required three hearings in chancery court and forced the father to retain counsel in Missouri. Brown v. Hewlett, — So. 3d —, 2019 Miss. App. LEXIS 94 (Miss. Ct. App. Mar. 12, 2019).

Chancery court did not abuse its discretion in connection with the issue of attorney's fees because a father was not entitled to fees that he would have incurred anyway litigating issues of custody, which was the primary issue in the case, or child support; with no specific evidence as to the amount of fees that the father incurred because of the mother's contempt, the chancellor did not abuse his discretion by awarding the father attorney's fees. Heisinger v. Riley, 243 So. 3d 248, 2018 Miss. App. LEXIS 154 (Miss. Ct. App. 2018).

Chancery court did not err in awarding attorney's fees to a mother because it determined that the award was a reasonable amount based on its experience, observation, and the information before it, i.e., the pleadings that requested the attorney's fees and a three-day hearing that required the presence of the mother's attorney Taylor v. Timmons (In re C.T.), 228 So. 3d 311, 2017 Miss. App. LEXIS 332 (Miss. Ct. App. 2017).

Where the court found that debt owed by debtor was nondischargeable in the amount of $2,903.89, and the creditor's attorney requested $11,988.75 in fees and costs, considering the Miss. R. Prof. Conduct 1.5 factors and the lodestar amount, the court reduced the amount requested by 50% because it found no basis to justify a fee award so much greater than the amount recovered. Hometown Credit, LLC v. Peters (In re Peters), — B.R. —, 2017 Bankr. LEXIS 861 (Bankr. S.D. Miss. Mar. 28, 2017).

Where debtor agreed to nondischargeable judgment in amount of $1,347.90 on underlying debt and creditor requested $5,080 in attorney fees, court, applying factors in Miss. R. Prof. Conduct 1.5, reduced amount to $1,270 because there was no basis to justify award of fees so much greater than amount recovered, the customary fee for actions of this type was one-third of the amount of the indebtedness and the questions presented were not novel or difficult. Pikco Finance, Inc. v. Staten (In re Staten), 559 B.R. 666, 2016 Bankr. LEXIS 3997 (Bankr. S.D. Miss. 2016).

Chancellor did not abuse the chancellor's discretion in ordering a former spouse to pay damages to the ex-spouse in a contempt judgment because, while there was no itemized bill of the legal services or travel expenses of the ex-spouse, the record showed the amount of legal work performed and the ex-spouse's residence in another state. Moreover, the award was reasonable. Moseley v. Smith, 180 So. 3d 667, 2014 Miss. App. LEXIS 689 (Miss. Ct. App. 2014), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 605 (Miss. 2015), cert. dismissed, — So. 3d —, 2015 Miss. LEXIS 625 (Miss. 2015).

In this declaratory judgment action, plaintiff was awarded attorney's fees and expenses because the time billed by plaintiff in pursuit of the declaratory judgment, including the time billed pursuing summary judgment, was neither excessive nor unreasonable where plaintiff's briefs were thoroughly researched and well written — a fact that greatly contributed to its success in this proceeding. MGM Resorts Miss., Inc. v. Thyssenkrupp Elevator Corp., — F. Supp. 3d —, 2015 U.S. Dist. LEXIS 118483 (N.D. Miss. Sept. 4, 2015).

Trial court did not err in awarding a wife attorney's fees because it awarded a reasonable amount of attorney's fees to the wife pursuant to the statute based on its experience, observation, and the information before it, i.e., the pleadings and a one-day hearing. Riley v. Riley, 196 So. 3d 1159, 2016 Miss. App. LEXIS 505 (Miss. Ct. App. 2016).

In a divorce action, the trial court's award of attorneys fees to the wife was not supported by the evidence; although she testified about her lack of income, she did not submit a financial statement to substantiate her inability to pay, and there was no evidence as to the amount or reasonableness of the fees. Speights v. Speights, 126 So. 3d 76, 2013 Miss. App. LEXIS 743 (Miss. Ct. App. 2013).

Award of attorney's fees was not an abuse of discretion because there was evidence of the actual attorney's fees homeowners incurred; since there was a basis for the award of punitive damages, an award of attorney's fees was proper. Woodkrest Custom Homes Inc. v. Cooper, 108 So. 3d 460, 2013 Miss. App. LEXIS 24 (Miss. Ct. App. 2013).

In a products liability action alleging three welding rod manufacturers' failure to warn, the court granted the married couple's request for an attorney's fee award; exercising its discretion under Fed. R. Civ. P. 54(d) and recognizing the factors for determining a reasonable fee, set forth in Miss. R. Prof. Conduct 1.5, as well as the legislative dictated regarding reasonable fees in Miss. Code Ann. § 9-1-41, the court allowed the manufacturers to either stipulate to the fee amount requested by the couple, $2,173,185.73, or to provide the court with a challenge to the couple's fee request within 28 days from the date of the court's order. Jowers v. BOC Group, Inc., 608 F. Supp. 2d 724, 2009 U.S. Dist. LEXIS 28806 (S.D. Miss. 2009), vacated, in part, 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. 2010).

Where an insurance salesman breached an employment agreement by selling policies to former clients, the award of attorney's fees was proper because the former employer was not require to provide any additional offer of proof on the necessity or reasonableness of attorneys' fees. Raines v. Bottrell Ins. Agency, Inc., 992 So. 2d 642, 2008 Miss. App. LEXIS 274 (Miss. Ct. App.), cert. dismissed, 997 So. 2d 924, 2008 Miss. LEXIS 541 (Miss. 2008).

In a collection suit, an award of attorney's fees in the amount of one-third of the judgment was presumptively reasonable based on the application of several factors, such as the difficulty in collecting the judgment due to a bankruptcy filing and a fee agreement. Gulf City Seafoods, Inc. v. Oriental Foods, Inc., 986 So. 2d 974, 2007 Miss. App. LEXIS 771 (Miss. Ct. App. 2007), cert. denied, 987 So. 2d 451, 2008 Miss. LEXIS 341 (Miss. 2008).

In a dispute involving the sale of real estate, a chancellor used the reasonableness factors under Miss. Code Ann. § 9-1-41 in awarding the sellers their attorney fees under the terms of a contract since they prevailed. Culbreath Revocable Trust v. Sanders, 979 So. 2d 704, 2007 Miss. App. LEXIS 591 (Miss. Ct. App. 2007), cert. denied, 979 So. 2d 691, 2008 Miss. LEXIS 162 (Miss. 2008).

In a complex contract case regarding damages to equipment owned by a utilities commission, a trial court did not abuse its discretion by awarding fees to two attorneys in the case, as it was clear from the language of the trial judge's order that the judge did in fact apply the reasonableness factors under McKee v. McKee, 418 So. 2d 764 (Miss 1982), even though he did not detail his reasoning; moreover, it was unnecessary to determine whether McKee predated Miss. Code Ann. § 9-1-41. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, 964 So. 2d 1100, 2007 Miss. LEXIS 495 (Miss. 2007).

Chancery court erred in finding that there was nothing before it to show that the creditor's accountant's fees were reasonable; but for the fraud of the debtor, the creditor would not have incurred this expense. Allred v. Fairchild, 916 So. 2d 529, 2005 Miss. LEXIS 809 (Miss. 2005).

An award of one-third of the amount collected was appropriate where the defendant had to defend against the plaintiff's claim in order to collect the amount owed and where the defendant presented testimony from an experienced trial attorney in Mississippi who stated that 25 percent of the amount collected is a reasonable attorneys' fee in Mississippi for collection of an open account if suit is not filed and that 33 ⅓ percent is appropriate if suit is filed. Par Indus. v. Target Container Co., 708 So. 2d 44, 1998 Miss. LEXIS 41 (Miss. 1998).

Attorneys' fees awarded in a case involving an employer's bad faith failure to pay a worker's compensation claim were improperly granted because the trial court abused its discretion by making inaccurate findings regarding the factors outlined in determining the reasonableness of such an award. Miss. Power & Light Co. v. Cook, 832 So. 2d 474, 2002 Miss. LEXIS 399 (Miss. 2002).

§ 9-1-43. Limit on compensation of chancery clerks and circuit clerks and their related employees; liability on bonds; chancery court clerk clearing accounts; circuit court clerk clearing accounts; journals and receipts; punishment for failure to deposit funds.

[Effective until January 1, 2020, this section will read as follows:]

(1) After making deductions for employer contributions paid by the chancery or circuit clerk to the Public Employees' Retirement System under Sections 25-11-106.1 and 25-11-123(f)(4), employee salaries and related salary expenses, and expenses allowed as deductions by Schedule C of the Internal Revenue Code, no office of the chancery clerk or circuit clerk of any county in the state shall receive fees as compensation for the chancery clerk's or circuit clerk's services in excess of Ninety Thousand Dollars ($90,000.00). All such fees received by the office of chancery or circuit clerks that are in excess of the salary limitation shall be deposited by such clerk into the county general fund on or before April 15 for the preceding calendar year. If the chancery clerk or circuit clerk serves less than one (1) year, then he shall not receive as compensation any fees in excess of that portion of the salary limitation that can be attributed to his time in office on a pro rata basis. Upon leaving office, income earned by any clerk in his last full year of office but not received until after his last full year of office shall not be included in determining the salary limitation of the successor clerk. There shall be exempted from the provisions of this subsection any monies or commissions from private or governmental sources which: (a) are to be held by the chancery or circuit clerk in a trust or custodial capacity as prescribed in subsections (4) and (5); or (b) are received as

compensation for services performed upon order of a court or board of supervisors which are not required of the chancery clerk or circuit clerk by statute.

(2) It shall be unlawful for any chancery clerk or circuit clerk to use fees in excess of Ninety Thousand Dollars ($90,000.00), to pay the salaries or actual or necessary expenses of employees who are related to such clerk by blood or marriage within the first degree of kinship according to the civil law method of computing kinship as provided in Sections 1-3-71 and 1-3-73. However, the prohibition of this subsection shall not apply to any individual who was an employee of the clerk's office prior to the date his or her relative was elected as chancery or circuit clerk. The spouse and/or any children of the chancery clerk or circuit clerk employed in the office of the chancery clerk may be paid a salary; however, the combined annual salaries of the clerk, spouse and any child of the clerk may not exceed an amount equal to the salary limitation.

(3) The chancery clerk and the circuit clerk shall be liable on their official bond for the proper deposit and accounting of all monies received by his office. The State Auditor shall promulgate uniform accounting methods for the accounting of all sources of income by the offices of the chancery and circuit clerk.

(4) There is created in the county depository of each county a clearing account to be designated as the "chancery court clerk clearing account," into which shall be deposited: (a) all such monies as the clerk of the chancery court shall receive from any person complying with any writ of garnishment, attachment, execution or other like process authorized by law for the enforcement of child support, spousal support or any other judgment; (b) any portion of any fees required by law to be collected in civil cases which are to pay for the service of process or writs in another county; and (c) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies, but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court. The clerk of the chancery court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account at such times, in such amounts and to such persons as shall be proper and in accordance with law.

The following monies paid to the chancery clerk shall be subject to the salary limitation prescribed under subsection (1): (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil case in chancery; (b) all fees collected for land recordings, charters, notary bonds, certification of decrees and copies of any documents; (c) all land redemption and mineral documentary stamp commissions; and (d) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity. Such fees as shall exceed the salary limitations shall be maintained in a bank account in the county depository and accounted for separately from those monies paid into the chancery court clerk clearing account.

(5) There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk civil clearing account," into

which shall be deposited: (a) all such monies and fees as the clerk of the circuit court shall receive from any person complying with any writ of garnishment, attachment, execution or any other like process authorized by law for the enforcement of a judgment; (b) any portion of any fees required by law or court order to be collected in civil cases; (c) all fees collected for the issuance of marriage licenses; and (d) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court.

There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk criminal clearing account," into which shall be deposited: (a) all such monies as are received in criminal cases in the circuit court pursuant to any order requiring payment as restitution to the victims of criminal offenses; (b) any portion of any fees and fines required by law or court order to be collected in criminal cases; and (c) all cash bonds as shall be deposited with the court. The clerk of the circuit court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account, at such times, in such amounts and to such persons as shall be proper and in accordance with law; however, such monies as are forfeited in criminal cases shall be paid by the clerk of the circuit court to the clerk of the board of supervisors for deposit in the general fund of the county.

The following monies paid to the circuit clerk shall be subject to the salary limitation prescribed under subsection (1): (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil action in circuit court; (b) copies of any documents; and (c) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity.

(6) The chancery clerk and the circuit clerk shall establish and maintain a cash journal for recording cash receipts from private or government sources for furnishing copies of any papers of record or on file, or for rendering services as a notary public, or other fees wherein the total fee for the transaction is Ten Dollars ($10.00) or less. The cash journal entry shall include the date, amount and type of transaction, and the clerk shall not be required to issue a receipt to the person receiving such services. The State Auditor shall not take exception to the furnishing of copies or the rendering of services as a notary by any clerk free of charge.

In any county having two (2) judicial districts, whenever the chancery clerk serves as deputy to the circuit clerk in one (1) judicial district and the circuit clerk serves as deputy to the chancery clerk in the other judicial district, the chancery clerk may maintain a cash journal, separate from the cash journal maintained for chancery clerk receipts, for recording the cash receipts paid to him as deputy circuit clerk, and the circuit clerk may maintain a cash journal, separate from the cash journal maintained for circuit clerk receipts, for recording the cash receipts paid to him as deputy chancery clerk. The cash receipts collected by the chancery clerk in his capacity as deputy circuit clerk and the cash receipts collected by the circuit clerk in his capacity as deputy chancery clerk shall be subject to the salary limitation prescribed under subsection (1).

(7) Any clerk who knowingly shall fail to deposit funds or otherwise violate the provisions of this section shall be guilty of a misdemeanor in office and, upon conviction thereof, shall be fined in an amount not to exceed double the amount that he failed to deposit, or imprisoned for not to exceed six (6) months in the county jail, or be punished by both such fine and imprisonment.

[Effective from and after January 1, 2020, this section will read as follows:]

(1) After making deductions for employer contributions paid by the chancery or circuit clerk to the Public Employees' Retirement System under Sections 25-11-106.1 and 25-11-123(f)(4), employee salaries and related salary expenses, and expenses allowed as deductions by Schedule C of the Internal Revenue Code, no office of the chancery clerk or circuit clerk of any county in the state shall receive fees as compensation for the chancery clerk's or circuit clerk's services in excess of Ninety-four Thousand Five Hundred Dollars ($94,500.00). All such fees received by the office of chancery or circuit clerks that are in excess of the salary limitation shall be deposited by such clerk into the county general fund on or before April 15 for the preceding calendar year. If the chancery clerk or circuit clerk serves less than one (1) year, then he shall not receive as compensation any fees in excess of that portion of the salary limitation that can be attributed to his time in office on a pro rata basis. Upon leaving office, income earned by any clerk in his last full year of office but not received until after his last full year of office shall not be included in determining the salary limitation of the successor clerk. There shall be exempted from the provisions of this subsection any monies or commissions from private or governmental sources which: (a) are to be held by the chancery or circuit clerk in a trust or custodial capacity as prescribed in subsections (4) and (5); or (b) are received as compensation for services performed upon order of a court or board of supervisors which are not required of the chancery clerk or circuit clerk by statute.

(2) It shall be unlawful for any chancery clerk or circuit clerk to use fees in excess of Ninety-four Thousand Five Hundred Dollars ($94,500.00), to pay the salaries or actual or necessary expenses of employees who are related to such clerk by blood or marriage within the first degree of kinship according to the civil law method of computing kinship as provided in Sections 1-3-71 and 1-3-73. However, the prohibition of this subsection shall not apply to any individual who was an employee of the clerk's office prior to the date his or her relative was elected as chancery or circuit clerk. The spouse and/or any children of the chancery clerk or circuit clerk employed in the office of the chancery clerk may be paid a salary; however, the combined annual salaries of the clerk, spouse and any child of the clerk may not exceed an amount equal to the salary limitation.

(3) The chancery clerk and the circuit clerk shall be liable on their official bond for the proper deposit and accounting of all monies received by his office. The State Auditor shall promulgate uniform accounting methods for the accounting of all sources of income by the offices of the chancery and circuit clerk.

(4) There is created in the county depository of each county a clearing account to be designated as the "chancery court clerk clearing account," into which shall be deposited: (a) all such monies as the clerk of the chancery court shall receive from any person complying with any writ of garnishment, attachment, execution or other like process authorized by law for the enforcement of child support, spousal support or any other judgment; (b) any portion of any fees required by law to be collected in civil cases which are to pay for the service of process or writs in another county; and (c) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies, but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court. The clerk of the chancery court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account at such times, in such amounts and to such persons as shall be proper and in accordance with law.

The following monies paid to the chancery clerk shall be subject to the salary limitation prescribed under subsection (1): (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil case in chancery; (b) all fees collected for land recordings, charters, notary bonds, certification of decrees and copies of any documents; (c) all land redemption and mineral documentary stamp commissions; and (d) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity. Such fees as shall exceed the salary limitations shall be maintained in a bank account in the county depository and accounted for separately from those monies paid into the chancery court clerk clearing account.

(5) There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk civil clearing account," into which shall be deposited: (a) all such monies and fees as the clerk of the circuit court shall receive from any person complying with any writ of garnishment, attachment, execution or any other like process authorized by law for the enforcement of a judgment; (b) any portion of any fees required by law or court order to be collected in civil cases; (c) all fees collected for the issuance of marriage licenses; and (d) any other money as shall be deposited with the court which by its nature is not, at the time of its deposit, public monies but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court.

There is created in the county depository in each county a clearing account to be designated as the "circuit court clerk criminal clearing account," into which shall be deposited: (a) all such monies as are received in criminal cases in the circuit court pursuant to any order requiring payment as restitution to the victims of criminal offenses; (b) any portion of any fees and fines required by law or court order to be collected in criminal cases; and (c) all cash bonds as shall be deposited with the court. The clerk of the circuit court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account, at such times, in such amounts and to such persons as shall be proper and in accordance with law; however, such monies as are forfeited in criminal cases shall be paid by the clerk of the circuit court to the clerk of the board of supervisors for deposit in the general fund of the county.

The following monies paid to the circuit clerk shall be subject to the salary limitation prescribed under subsection (1): (a) all fees required by law to be collected for the filing, recording or abstracting of any bill, petition, pleading or decree in any civil action in circuit court; (b) copies of any documents; and (c) any other monies or commissions from private or governmental sources for statutory functions which are not to be held by the court in a trust capacity.

(6) The chancery clerk and the circuit clerk shall establish and maintain a cash journal for recording cash receipts from private or government sources for furnishing copies of any papers of record or on file, or for rendering services as a notary public, or other fees wherein the total fee for the transaction is Ten Dollars ($10.00) or less. The cash journal entry shall include the date, amount and type of transaction, and the clerk shall not be required to issue a receipt to the person receiving such services. The State Auditor shall not take exception to the furnishing of copies or the rendering of services as a notary by any clerk free of charge.

In any county having two (2) judicial districts, whenever the chancery clerk serves as deputy to the circuit clerk in one (1) judicial district and the circuit clerk serves as deputy to the chancery clerk in the other judicial district, the chancery clerk may maintain a cash journal, separate from the cash journal maintained for chancery clerk receipts, for recording the cash receipts paid to him as deputy circuit clerk, and the circuit clerk may maintain a cash journal, separate from the cash journal maintained for circuit clerk receipts, for recording the cash receipts paid to him as deputy chancery clerk. The cash receipts collected by the chancery clerk in his capacity as deputy circuit clerk and the cash receipts collected by the circuit clerk in his capacity as deputy chancery clerk shall be subject to the salary limitation prescribed under subsection (1).

(7) Any clerk who knowingly shall fail to deposit funds or otherwise violate the provisions of this section shall be guilty of a misdemeanor in office and, upon conviction thereof, shall be fined in an amount not to exceed double the amount that he failed to deposit, or imprisoned for not to exceed six (6) months in the county jail, or be punished by both such fine and imprisonment.

HISTORY: Laws, 1993, ch. 481, § 1; Laws, 1997, ch. 570, § 9; Laws, 1998, ch. 369, § 1; Laws, 1999, ch. 422, § 1; Laws, 2004, ch. 505, § 11; Laws, 2011, ch. 402, § 2, eff from and after passage (approved Mar. 14, 2011); Laws, 2019, ch. 485, § 1, eff from and after January 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint

Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence of subsection (2). The words "However, that the prohibition" were changed to "However, the prohibition." The Joint Committee ratified the correction at its May 20, 1998 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2). The words "and/r" were changed to "and/or." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Editor's Notes — The United States Attorney General, by letter dated May 14, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1993, ch. 481, § 1.

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1997, ch. 570, § 9.

On August 2, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 422, § 1.

By letter dated August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2004, ch. 505, § 16.

Editor's Note — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act."

Amendment Notes — The 2019 amendment, effective January 1, 2020, substituted "Ninety-four Thousand Five Hundred Dollars ($94,500.00)" for "Ninety Thousand Dollars ($90,000.00)" in (1) and (2).

Cross References — Additional allowance for chancery court clerks in certain counties, see § 25-7-10.

JUDICIAL DECISIONS

1. In general.

In a case in which defendant, a former county circuit clerk, was convicted of embezzlement, in violation of 18 U.S.C.S. § 666(a)(1), his reliance on the Phillips decision, a Louisiana case, was misplaced. In the Phillips case, defendant, a former tax assessor of a parish, was not an agent of the parish under 18 U.S.C.S. § § 666(d)(1), because Louisiana law completely separated the tax assessor's office from the parish government; however, in Mississippi, circuit clerks were not completely separated from county governments in Mississippi, and the Phillips decision was not applicable in the present case. United States v. Harris, 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Under Section 9-1-43, the only time that a relative of a chancery or circuit clerk may be paid a salary, which combined with the clerk's fees would exceed the cap, would be when that relative was employed by the clerk's office prior to the time the clerk was first elected to office. To allow otherwise would defeat the intent of the statute. Ashley, August 10, 1995, A.G. Op. #95-0477.

Any compensation received by circuit clerks for services rendered that are not statutorily required would be exempt from the salary limitations as set forth in Section 9-1-43. Carpenter, February 7, 1996, A.G. Op. #96-0003.

Under Section 9-1-43(1) chancery and circuit clerks will be allowed to deduct employee salaries and related expenses, and any expenses allowed as deductions by Schedule C of the Internal Revenue Code for purposes of determining fees to be received by them as compensation. Evans, November 8, 1996, A.G. Op. #96-0716.

A chancery or circuit clerk may employ anyone related to them outside the first degree, pay that employee's salary and related expenses out of fees earned by that office and deduct that employee's salary and related expenses as a deductible expense of the office in reaching the salary cap. Bryant, Dec. 19, 1997, A.G. Op. #97-0757.

A new chancery clerk's salary for the remainder of that year is limited by the unfulfilled salary cap of the old clerk, and the new clerk is entitled to earn fees limited by that portion of the salary cap that can be attributed to his time in office on a pro rata basis. Bryant, December 2, 1998, A.G. Op. #98-0744

The county identification number should be used in setting up a clearing account in the county depository for funds held by the chancery court in a case before the court. Creekmore, May 30, 2003, A.G. Op. 03-0035.

Nothing in subsection (2) of this section would authorize a circuit clerk to employ a relative within the third degree of kinship who is to be paid out of public funds by the board of supervisors pursuant to § 9-7-126. Dulaney, Aug. 27, 2004, A.G. Op. 04-0413.

The salary of a family member would not count as part of the twenty-five percent compensation of a retired circuit or chancery clerk. McLeod, Mar. 11, 2005, A.G. Op. 05-0056.

§ 9-1-44. Appropriation of funds from county general fund to supplement payment of expenses of office of chancery or circuit clerk under certain circumstances.

If the total amount of all fees received by the office of the chancery clerk or by the office of the circuit clerk in any year are insufficient to pay the expenses of the office for that year, the clerk shall notify the board of supervisors, and if the board of supervisors makes a finding and enters on its minutes the finding that the fees received by the office of the clerk are insufficient to pay the expenses of the office for that year, then the board of supervisors, in its discretion, may appropriate funds from the general fund of the county to the office of the clerk as necessary to supplement the payment of the expenses of the office of the clerk.

HISTORY: Laws, 2019, ch. 485, § 13, eff from and after passage (approved April 18, 2019).

Editor's Note — Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act."

§ 9-1-45. Filing of annual reports by chancery and circuit clerks; failure to provide report; notice of noncompliance; hearing to determine level of compliance; penalties for noncompliance.

(1) Each chancery and circuit clerk shall file, not later than April 15 of

each year, with the State Auditor of Public Accounts a true and accurate annual report on a form to be designed and supplied to each clerk by the State Auditor of Public Accounts immediately after January 1 of each year. The form shall include the following information: (a) revenues subject to the salary cap, including fees; (b) revenues not subject to the salary cap; and (c) expenses of office, including any salary paid to a clerk's spouse or children. Each chancery and circuit clerk shall provide any additional information requested by the Public Employees' Retirement System for the purpose of retirement calculations.

(2) In any county having two (2) judicial districts, a separate report may be filed by the chancery clerk and circuit clerk for each judicial district. Whenever the chancery clerk serves as deputy to the circuit clerk in one (1) judicial district and the circuit clerk serves as deputy to the chancery clerk in the other judicial district, each clerk may file, for the judicial district in which he serves, one (1) report for the revenues and expenses of his office in his capacity as chancery or circuit clerk and a separate report for reporting the revenues collected and expenses incurred in his capacity as deputy circuit or deputy chancery clerk.

(3) If the chancery or circuit clerk fails to provide the reports required in this section, then the State Auditor shall give by United States certified mail, return receipt requested, written notification to the chancery or circuit clerk of noncompliance. If within thirty (30) days after receipt of the notice, the chancery or circuit clerk, in the opinion of the State Auditor, remains in noncompliance, the State Auditor may institute civil proceedings in a court of the county in which the clerk serves. The court, upon a hearing, shall decide the issue and if it determines that the clerk is not in substantial compliance, shall order the clerk to immediately and thereafter comply. Violations of any order of the court shall be punishable as for contempt. In addition, the court in its discretion may impose a civil penalty in an amount not to exceed Five Thousand Dollars ($5,000.00) upon the clerk, for which he shall be liable in his individual capacity, for any such noncompliance that the court determines as intentional or willful.

HISTORY: Laws, 1996, ch. 535, § 4; Laws, 1998, ch. 369, § 2; Laws, 2004, ch. 318, § 1, eff from and after passage (approved Apr. 12, 2004).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Chancery court clerk fees, see § 25-7-9.

As to fees charged by clerks of the chancery court, see § 25-7-9.

Circuit court clerk fees, see § 25-7-13.

As to fees charged by clerks of the circuit court, see § 25-7-13.

OPINIONS OF THE ATTORNEY GENERAL

The content of the clerk's annual report to the State Auditor is set forth by Section 9-1-45. The report includes revenues, including fees both subject to and not subject to the cap, expenses and additional information which may be requested by the Public Employees' Retirement System for purposes of retirement calculations. Evans, November 8, 1996, A.G. Op. #96-0716.

§ 9-1-46. Semiannual reports by clerks of county, municipal and justice courts to Administrative Office of Courts; information to be included.

(1) Semiannually, the circuit clerks of each county, the municipal court clerks of each municipality, and the justice court clerks of each county shall report to the Administrative Office of Courts the following information:

(a) Individual misdemeanor and felony case records by offense, from the circuit clerk for all circuit and county court criminal proceedings, and from the municipal and justice court clerks for all misdemeanors, electronically when available, containing the date on which the criminal charges were filed, charge code and name of indicted offenses, count number of indicted offenses, whether counsel was appointed, the disposition of the charges, date disposed, date sentenced, charge code and name of sentenced offenses, and sentence length.

(b) Data should be kept individually by case number and misdemeanor charges or indicted felony offense, and include, for criminal docket purposes, demographic information necessary for tracking individuals across multiple databases should be collected, including date of birth, city and state of residence, race, and gender.

(2) The Administrative Office of Courts shall be empowered to establish a uniform reporting format for all court clerks described in subsection (1) of this section. Such reporting format shall emphasize the need for reporting information in a sortable, electronic format. All clerks who submit required information in other formats shall report to the Administrative Office of Courts a schedule for conversion to technology to enable the reporting of all required data in a sortable, electronic format.

(3) Semiannual reports shall be made to the Administrative Office of Courts by December 31, 2014, or as soon thereafter as practicable, and every year thereafter, and on June 30, 2015, or as soon thereafter as practicable, and every year thereafter. On August 1, 2015, and each year thereafter, the Administrative Office of Courts shall provide to PEER and the Office of State Public Defender sortable, electronic copies of all reports required by this section.

(4) The Administrative Office of Courts shall share the information required under this section with the Oversight Task Force.

HISTORY: Laws, 2014, ch. 457, § 65; Laws, 2016, ch. 487, § 1, eff from and after July 1, 2016.

Cross References — Oversight Task Force, see § 47-5-6.

§ 9-1-47. Municipal and justice courts authorized to purge judgment rolls of fines and fees owed by deceased person.

The municipal and justice courts are authorized to purge judgment rolls of all fines and fees owed by any deceased person upon presentation of proof that the person liable for such fines or fees is deceased.

HISTORY: Laws, 2009, ch. 499, § 2, eff from and after passage (approved Apr. 6, 2009).

§ 9-1-49. Report concerning certain persons' access to firearms.

[Effective until January 1, 2020, this section will read as follows:]

(1) The clerk of the court shall prepare and forward to the Department of Public Safety the information described by subsection (2) of this section not later than the thirtieth day after the date the court:

(a) Judicially determines that a person is a person with mental illness or person with an intellectual disability under Title 41, Chapter 21, Mississippi Code of 1972, whether ordered for inpatient treatment, outpatient treatment, day treatment, night treatment or home health services treatment;

(b) Acquits a person in a criminal case by reason of insanity or on a ground of intellectual disability, without regard to whether the person is ordered by a court to receive inpatient treatment or residential care under Section 99-13-7;

(c) Appoints a guardian or conservator under Title 93, Chapter 13, based on the determination that the person is incapable of managing his own estate due to mental weakness;

(d) Determines that a person is incompetent to stand trial pursuant to Rule 9.06 of the Mississippi Rules of Circuit and County Court Practice;

(e) Finds under Section 93-13-151 that a person has been restored to reason; or

(f) Enters an order of relief from a firearms disability under Section 97-37-5(4).

(2) The clerk of the court shall prepare and forward the following information:

(a) The complete name, race, and sex of the person;

(b) Any known identifying number of the person, including social security number, driver's license number, or state identification card number;

(c) The person's date of birth; and

(d) The federal prohibited-person information that is the basis of the report required by this section.

(3) If practicable, the clerk of the court shall forward to the Department of Public Safety the information described by subsection (2) of this section in an electronic format prescribed by the department.

(4) If an order previously reported to the department under subsection (1) of this section is reversed by order of any court, the clerk shall notify the department of the reversal not later than thirty (30) days after the clerk receives the court order or the mandate from the appellate court.

(5) The duty of a clerk to prepare and forward information under this section is not affected by:

(a) Any subsequent appeal of the court order;

(b) Any subsequent modification of the court order; or

(c) The expiration of the court order.

[Effective from and after January 1, 2020, this section will read as follows:]

(1) The clerk of the court shall prepare and forward to the Department of Public Safety the information described by subsection (2) of this section not later than the thirtieth day after the date the court:

(a) Judicially determines that a person is a person with mental illness or person with an intellectual disability under Title 41, Chapter 21, Mississippi Code of 1972, whether ordered for inpatient treatment, outpatient treatment, day treatment, night treatment or home health services treatment;

(b) Acquits a person in a criminal case by reason of insanity or on a ground of intellectual disability, without regard to whether the person is ordered by a court to receive inpatient treatment or residential care under Section 99-13-7;

(c) Appoints a guardian or conservator under Article 2, 3 or 4 of Title 93, Chapter 20, Mississippi Code of 1972, based on the determination that the person is incapable of managing his own person or estate;

(d) Determines that a person is incompetent to stand trial pursuant to Rule 9.06 of the Mississippi Rules of Circuit and County Court Practice;

(e) Finds under Section Section 93-20-318 or 93-20-430 that a person has been restored to reason; or

(f) Enters an order of relief from a firearms disability under Section 97-37-5(4).

(2) The clerk of the court shall prepare and forward the following information:

(a) The complete name, race, and sex of the person;

(b) Any known identifying number of the person, including social security number, driver's license number, or state identification card number;

(c) The person's date of birth; and

(d) The federal prohibited-person information that is the basis of the report required by this section.

(3) If practicable, the clerk of the court shall forward to the Department of Public Safety the information described by subsection (2) of this section in an electronic format prescribed by the department.

(4) If an order previously reported to the department under subsection (1) of this section is reversed by order of any court, the clerk shall notify the department of the reversal not later than thirty (30) days after the clerk receives the court order or the mandate from the appellate court.

(5) The duty of a clerk to prepare and forward information under this section is not affected by:

(a) Any subsequent appeal of the court order;

(b) Any subsequent modification of the court order; or

(c) The expiration of the court order.

HISTORY: Laws, 2013, ch. 384, § 2, eff from and after July 1, 2013; Laws, 2019, ch. 463, § 2, eff from and after January 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (1)(a) by substituting "person is a person with mental illness or person with an intellectual disability" for "person is a mentally ill or mentally retarded person." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Amendment Notes — The 2019 amendment, effective January 1, 2020, rewrote (1)(c), which read: "Appoints a guardian or conservator under Title 93, Chapter 13, based on the determination that the person is incapable of managing his own estate due to mental weakness"; and substituted "Section 93-20-318 or 93-20-430" for "Section 93-13-151" in (1)(e).

ELECTRONIC FILING AND STORAGE OF COURT DOCUMENTS

Sec.
9-1-51. Definitions.
9-1-53. Authority to electronically file and store court documents.
9-1-55. Repealed.
9-1-57. Plan for electronic storage system.

§ 9-1-51. Definitions.

For purposes of Sections 9-1-51 through 9-1-57, the following terms shall have the meanings ascribed herein unless the context shall otherwise require:

(a) "Court" shall mean the Supreme Court, Court of Appeals, circuit courts, chancery courts, county courts, youth courts, family courts, justice courts and the municipal courts of this state.

(b) "Clerk" shall mean the clerks of any court.

(c) "Judge" shall mean the senior judge of any court.

(d) "County office" shall mean the office of the circuit clerk, chancery clerk, tax assessor and tax collector of every county of this state.

(e) "Documents," "court records," or "court-related records" shall mean and include, but not be limited to, all contents in the file or record of any case or matter docketed by the court, administrative orders, court minutes, court dockets and ledgers, and other documents, instruments or papers required by law to be filed with the court.

(f) "Electronic filing of documents" shall mean the transmission of data to a clerk of any court or state agency by the communication of information which is originally displayed in written form and thereafter converted to digital electronic signals, transformed by computer and stored by the clerk or state agency either on microfilm, magnetic tape, optical discs or any other medium.

(g) "Electronic storage of documents" shall mean the storage, retention and reproduction of documents using microfilm, microfiche, data processing, computers or other electronic process which correctly and legibly stores and reproduces or which forms a medium for storage, copying or reproducing documents.

(h) "Filing system" or "storage system" shall mean the system used by a court or county office for the electronic filing or storage of documents.

HISTORY: Laws, 1987, ch. 490, § 1; Laws, 1991, ch. 573, § 5; Laws, 1994, ch. 521, § 1; Laws, 1995, ch. 506, § 3; Laws, 1997, ch. 507, § 2, eff from and after passage (approved April 8, 1997).

Editor's Notes — Laws, 1999, ch. 432, § 1, provides:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

Cross References — Chancery court clerk authorized to keep minute books by means of electronic filing or storage or both, as provided in this section in lieu of or in addition to any paper records, see §§ 9-5-135 et seq.

Electronic storage of certain files, records and other documents of circuit or county courts, see § 9-7-128.

RESEARCH REFERENCES

Am. Jur.

41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

§ 9-1-53. Authority to electronically file and store court documents.

Courts and county offices are hereby authorized but not required to institute procedures for the electronic filing and electronic storage of court documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Courts governed by rules promulgated by the Mississippi Supreme Court that institute electronic filing and electronic storage of court documents and offices of circuit and chancery clerks that institute electronic filing and electronic storage of court documents shall do so in conformity with such rules and regulations prescribed by the Administrative Office of Courts and adopted by the Mississippi Supreme Court concerning court records or court-related records. The provisions of Sections 9-1-51 through 9-1-57 shall not be construed to amend or repeal any other provision of existing state law which requires or provides for the maintenance of official written documents, records, dockets, books, ledgers or proceedings by a court or clerk of court in those courts which do not elect to exercise the discretion granted by this section. It is hereby declared to be the intent of the Legislature that official written documents, records, dockets, books, ledgers or proceedings may be filed, stored, maintained, reproduced and recorded in the manner authorized by Sections 9-1-51 through 9-1-57 or as otherwise provided by law, in the discretion of the clerk.

HISTORY: Laws, 1987, ch. 490, § 2; Laws, 1991, ch. 573, § 6; Laws, 1994, ch. 521, § 2; Laws, 1997, ch. 507, § 3, eff from and after passage (approved April 8, 1997).

Cross References — Chancery Court clerk authorized to keep minute books by means of electronic filing or storage or both, as provided in this section in lieu of or in addition to any paper records, see §§ 9-5-135 et seq.

RESEARCH REFERENCES

Am. Jur.
41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

§ 9-1-55. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991. § 9-1-55. [En Laws, 1987, ch. 490, § 3]

Editor's Notes — Former § 9-1-55 directed the Mississippi Supreme Court to promulgate rules and regulations to implement the provisions of §§ 9-1-51 through 9-1-57.

§ 9-1-57. Plan for electronic storage system.

A plan for the storage system shall require, but not be limited to, the following:

(a) All original documents shall be recorded and released into the system within a specified minimum time period after presentation to the clerk;

(b) Original paper records may be used during the pendency of any legal proceeding;

(c) The plan shall include setting standards for organizing, identifying, coding and indexing so that the image produced during the duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly;

(d) All materials used in the duplicating process which correctly and legibly reproduces or which forms a medium of copying or reproducing all public records, as herein authorized, and all processes of development, fixation and washing of said photographic duplicates shall be of a quality approved for permanent photographic records by the United States Bureau of Standards;

(e) The plan shall provide for retention of the court records consistent with other law and in conformity with rules and regulations prescribed by the Administrative Office of Courts and adopted by the Mississippi Supreme Court and shall provide security provisions to guard against physical loss, alterations and deterioration; and

(f) All transcripts, exemplifications, copies or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

HISTORY: Laws, 1987, ch. 490, § 4; Laws, 1994, ch. 521, § 3; Laws, 1997, ch. 507, § 4, eff from and after passage (approved April 8, 1997).

Cross References — Chancery Court clerk authorized to keep minute books by means of electronic filing or storage or both, as provided in this section in lieu of or in addition to any paper records, see §§ 9-5-135 et seq.

RESEARCH REFERENCES

Am. Jur.
41 Am. Jur. Trials 683, Computer Research for the Trial Lawyer.

APPOINTMENT TO JUDICIAL OFFICE

Sec.	
9-1-101.	Definitions.
9-1-103.	Vacancy in office.
9-1-105.	Physical disability or sickness; absence of judicial officer from state, etc.; appointment of special judge to serve on emergency basis.
9-1-107.	Senior judges.

§ 9-1-101. Definitions.

As used in Sections 9-1-101 through 9-1-107, 25-3-53 and 25-3-55 the following terms shall have the meaning ascribed to them herein:

(a) "Judicial office" means the position of judge of the Court of Appeals, chancery, circuit or county court judge, or Supreme Court Justice.

(b) "Judicial officer" means a judge of the Court of Appeals, chancery, circuit or county court, or a Supreme Court Justice.

HISTORY: Laws, 1989, ch. 587, § 1; Laws, 1993, ch. 518, § 16, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under

Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

§ 9-1-103. Vacancy in office.

Whenever a vacancy shall occur in any judicial office by reason of death of an incumbent, resignation or retirement of an incumbent, removal of an incumbent from office, or creation of a new judicial office in which there has not heretofore been an incumbent, the Governor shall have the authority to appoint a qualified person to fill such vacancy to serve for the unexpired term or until such vacancy is filled by election as provided in Section 23-15-849, Mississippi Code of 1972. When a vacancy shall occur for any of the reasons enumerated in this section, the clerk of the court shall notify the Governor of such vacancy immediately.

HISTORY: Laws, 1989, ch. 587, § 2, eff from and after April 25, 1989 (became law without the Governor's signature).

Cross References — Appointment of special judge to fill vacancy until Governor makes his appointment, see § 9-1-105.

JUDICIAL DECISIONS

1. Write-in election.

Write-in election for a circuit court judge was proper under Miss. Code Ann. § 23-15-365 because the circuit judge passed away after qualifying for the November 2, 2010 election, and Miss. Code Ann. § 9-1-103 permitted the appointee judge to serve for the unexpired term with no requirement of a special election since the circuit judge died fewer than nine months before the expiration of his term; the use of the word "or" in Miss. Code Ann. § 9-1-103 means that an election under Miss. Code Ann. § 23-15-849(1) need not occur if there is so little time in the unexpired term that the appointee may legally serve for the unexpired term. Rayner v. Barbour, 47 So. 3d 128, 2010 Miss. LEXIS 572 (Miss. 2010).

RESEARCH REFERENCES

Law Reviews.

Judicial Selection – What is Right for Mississippi?, 21 Miss. C. L. Rev. 199, Spring, 2002.

§ 9-1-105. Physical disability or sickness; absence of judicial officer from state, etc.; appointment of special judge to serve on emergency basis.

(1) Whenever any judicial officer is unwilling or unable to hear a case or unable to hold or attend any of the courts at the time and place required by law by reason of the physical disability or sickness of such judicial officer, by reason of the absence of such judicial officer from the state, by reason of the disqualification of such judicial officer pursuant to the provision of Section 165, Mississippi Constitution of 1890, or any provision of the Code of Judicial Conduct, or for any other reason, the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the

Mississippi Supreme Court, may appoint a person as a special judge to hear the case or attend and hold a court.

(2) Upon the request of the Chief Judge of the Court of Appeals, the senior judge of a chancery or circuit court district, the senior judge of a county court, or upon his own motion, the Chief Justice of the Mississippi Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, shall have the authority to appoint a special judge to serve on a temporary basis in a circuit, chancery or county court in the event of an emergency or overcrowded docket. It shall be the duty of any special judge so appointed to assist the court to which he is assigned in the disposition of causes so pending in such court for whatever period of time is designated by the Chief Justice. The Chief Justice, in his discretion, may appoint the special judge to hear particular cases, a particular type of case, or a particular portion of the court's docket.

(3) When a vacancy exists for any of the reasons enumerated in Section 9-1-103, the vacancy has not been filled within seven (7) days by an appointment by the Governor, and there is a pending cause or are pending causes in the court where the vacancy exists that in the interests of justice and in the orderly dispatch of the court's business require the appointment of a special judge, the Chief Justice of the Supreme Court, with the advice and consent of a majority of the justices of the Mississippi Supreme Court, may appoint a qualified person as a special judge to fill the vacancy until the Governor makes his appointment and such appointee has taken the oath of office.

(4) If the Chief Justice pursuant to this section shall make an appointment within the authority vested in the Governor by reason of Section 165, Mississippi Constitution of 1890, the Governor may at his election appoint a person to so serve. In the event that the Governor makes such an appointment, any appointment made by the Chief Justice pursuant to this section shall be void and of no further force or effect from the date of the Governor's appointment.

(5) When a judicial officer is unwilling or unable to hear a case or unable or unwilling to hold court for a period of time not to exceed two (2) weeks, the trial judge or judges of the affected district or county and other trial judges may agree among themselves regarding the appointment of a person for such case or such limited period of time. The trial judges shall submit a notice to the Chief Justice of the Supreme Court informing him of their appointment. If the Chief Justice does not appoint another person to serve as special judge within seven (7) days after receipt of such notice, the person designated in such order shall be deemed appointed.

(6) A person appointed to serve as a special judge may be any currently sitting or retired chancery, circuit or county court judge, Court of Appeals judge or Supreme Court Justice, or any other person possessing the qualifications of the judicial office for which the appointment is made; however, a judge or justice who was retired from service at the polls shall not be eligible for appointment as a special judge in the district in which he served prior to his defeat.

(7) Except as otherwise provided in subsection (2) of this section, the need for an appointment pursuant to this section may be certified to the Chief Justice of the Mississippi Supreme Court by any attorney in good standing or other officer of the court.

(8) The order appointing a person as a special judge pursuant to this section shall describe as specifically as possible the duration of the appointment.

(9) A special judge appointed pursuant to this section shall take the oath of office, if necessary, and shall, for the duration of his appointment, enjoy the full power and authority of the office to which he is appointed.

(10) Any currently sitting justice or judge appointed as a special judge under this section shall receive no additional compensation for his or her service as special judge. Any other person appointed as a special judge hereunder shall, for the period of his service, receive compensation from the state for each day's service a sum equal to $^{1}/_{260}{}^{\text{ths}}$ of the current salary in effect for the judicial office; however, no retired chancery, circuit or county court judge, retired Court of Appeals judge or any retired Supreme Court Justice appointed as a special judge pursuant to this section may, during any fiscal year, receive compensation in excess of fifty percent (50%) of the current salary in effect for a chancery or circuit court judge. Any person appointed as a special judge shall be reimbursed for travel expenses incurred in the performance of the official duties to which he may be appointed hereunder in the same manner as other public officials and employees as provided by Section 25-3-41, Mississippi Code of 1972.

(11) If any person appointed as such special judge is receiving retirement benefits by virtue of the provisions of the Public Employees' Retirement Law of 1952, appearing as Sections 25-11-1 through 25-11-139, Mississippi Code of 1972, such benefits shall not be reduced in any sum whatsoever because of such service, nor shall any sum be deducted as contributions toward retirement under said law.

(12) The Supreme Court shall have authority to prescribe rules and regulations reasonably necessary to implement and give effect to the provisions of this section.

(13) Nothing in this section shall abrogate the right of attorneys engaged in a case to agree upon a member of the bar to preside in a case pursuant to Section 165 of the Mississippi Constitution of 1890.

(14) The Supreme Court shall prepare the necessary payroll for special judges appointed pursuant to this section and shall submit such payroll to the Department of Finance and Administration.

(15) Special judges appointed pursuant to this section shall direct requests for reimbursement for travel expenses authorized pursuant to this section to the Supreme Court and the Supreme Court shall submit such requests to the Department of Finance and Administration. The Supreme Court shall have the power to adopt rules and regulations regarding the administration of travel expenses authorized pursuant to this section.

HISTORY: Laws, 1989, ch. 587, § 3; Laws, 1991, ch. 373, § 2; Laws, 1993, ch.

518, § 17; Laws, 2005, ch. 501, § 18, eff Jan. 1, 2007; Laws, 2014, ch. 407, § 1, eff from and after July 1, 2014; Laws, 2018, ch. 391, § 1, eff from and after passage (approved March 19, 2018).

Editor's Notes — On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 18.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

Amendment Notes — The 2018 amendment, effective March 19, 2018, in (2), inserted "the senior judge of a county court" and "or county" in the first sentence and made related changes, and added the last sentence; in the second sentence of (10), substituted "equal to $^{1}/_{260}{}^{ths}$" for "equal to $^{1}/_{260}$"; and made minor stylistic changes throughout.

Cross References — Designation of certain retired judges as Senior Judges, see § 9-1-107.

Recall of retired Supreme Court justices, see § 9-3-6.

Services of retired Supreme Court Judges, see § 9-3-12.

Compensation of special judge, see §§ 25-3-53 and 25-3-55.

JUDICIAL DECISIONS

ANALYSIS

I. Under Current Law.

1. In general.
2.-5. [Reserved for future use.]

II. Under Former § 9-1-13.

6. In general.
7. Powers and functions of special judge.
8. Termination of authority.

I. Under Current Law.

1. In general.

Trial court properly dismissed individuals' complaint against the Supreme Court chief justice for appointing a special chancellor to hear outstanding matters regarding two underlying cases as the chief justice enjoyed judicial immunity and the appointment was a judicial act. Vinson v. Prather, 879 So. 2d 1053, 2004 Miss. App. LEXIS 555 (Miss. Ct. App. 2004).

An order denying a defendant's motion for post-conviction relief would not be vacated on the ground that the appointment of the judge who issued the order did not comply with § 9-1-105(5) because notice of the appointment was not sent to the Chief Justice of the Supreme Court, since one who acts pursuant to the color of authority, though without legal authority, nevertheless performs valid acts. Lack v. Illinois Cent. Gulf R.R., 626 So. 2d 121, 1993 Miss. LEXIS 484 (Miss. 1993).

2.-5. [Reserved for future use.]

II. Under Former § 9-1-13.

6. In general.

Whether a chancellor will call in another chancellor under [Code 1942 § 1652], because of his disqualification, or certify his disqualification to the governor for the appointment of a special chancellor under this section, is a matter pertaining to the administrative functions of his office, and is not subject to review. Anderson v. Anderson, 190 Miss. 508, 200 So. 726, 1941 Miss. LEXIS 72 (Miss. 1941).

Case argued before special judge, sitting for chief justice, and two regular judges, where chief justice resumed seat and read the opinion, it was binding on the parties, the two regular judges hearing the argument concurring therein. Bowles v. Wood, 90 Miss. 742, 44 So. 169, 1907 Miss. LEXIS 116 (Miss. 1907).

7. Powers and functions of special judge.

Constitution § 165, authorizing the Governor to commission a lawyer to preside at a term of the court or in a case necessarily encompasses the right of the commissioned special judge to sign orders and decrees in a case or cases over which he has been designated to preside. De Moe v. McLeod, 228 Miss. 481, 89 So. 2d 730, 1956 Miss. LEXIS 537 (Miss. 1956).

A special chancellor, appointed and commissioned by the Governor under Constitution § 165 to try a suit to confirm title to real estate, has authority to sign a final decree in vacation. De Moe v. McLeod, 228 Miss. 481, 89 So. 2d 730, 1956 Miss. LEXIS 537 (Miss. 1956).

Fact that a special judge presided at the murder trial and regular judge heard and denied a motion for new trial did not constitute reversible error where the motion was properly denied on its merits and there was no showing that a special judge would have sustained the motion. Sims v. State, 209 Miss. 545, 47 So. 2d 849, 1950 Miss. LEXIS 412 (Miss. 1950).

The appointment of a special judge becomes effective upon the signing of his commission by the governor and its attestation by the secretary of state, even though the commission is not received until later by the appointee; and acts done by the appointee after acceptance of the appointment and qualification by taking the prescribed oath are valid. Smith v. State, 200 Miss. 184, 26 So. 2d 543, 1946 Miss. LEXIS 280 (Miss. 1946).

A special judge commissioned under this section is a de facto officer and his acts are valid although he failed to take the required official oath before assuming the duties of office. Powers v. State, 83 Miss. 691, 36 So. 6, 1903 Miss. LEXIS 90 (Miss. 1903), overruled, Jones v. State, 144 Miss. 52, 109 So. 265, 1926 Miss. LEXIS 341 (Miss. 1926).

A special judge, appointed under this section, is empowered to approve the stenographer's report of the evidence and to sign the bill of exceptions. Lopez v. Jackson, 79 Miss. 460, 31 So. 206, 1901 Miss. LEXIS 101 (Miss. 1901).

A bill of exceptions must be signed by the special judge, where he is appointed under this section [Code 1942 § 1653], and not by the regular judge. Illinois C. R. Co. v. Bowles, 71 Miss. 994, 16 So. 235, 1894 Miss. LEXIS 6 (Miss. 1894).

8. Termination of authority.

Authority of special judge appointed to act for chief justice of the Supreme Court during his illness terminates when chief justice resumes his duties. John E. Hall Com. Co. v. R. L. Crook & Co., 87 Miss. 445, 40 So. 20, 1905 Miss. LEXIS 99 (Miss. 1905).

OPINIONS OF THE ATTORNEY GENERAL

Unless the Supreme Court order appointing a county court judge as special judge specifies otherwise, such county judge would continue to serve in the capacity of a special judge even when his/her elected term ends. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

Pursuant to subsection (14) of this section, special judges receive compensation from the Department of Finance and Administration. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

A special judge is entitled to the same power and authority as a regularly elected judge and would be able to carry a firearm under the provisions of § 97-37-7. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

A special judge would be able to conduct marriage ceremonies under the same authority and limitations as a judge in the office to which he has been appointed. Floyd, Oct. 18, 2002, A.G. Op. #02-0595.

A practicing attorney selected as a special judge for service on the Supreme Court may remain of counsel in all cases presently pending in the state and federal courts. However, pursuant to § 9-1-25 which applies to any judge of the Supreme Court, a special judge may not be engaged in the practice of law and, therefore, may not practice in any of the state courts during his tenure as a special judge. A special judge may, pursuant to the same statute, practice in the federal courts in any case in which he or she was engaged when appointed. Hurst, May, 21, 2004, A.G. Op. #04-0180.

Assignment of causes or matters to a county judge pursuant to § 9-9-35 is by consent of the county judge. Therefore, the latter has discretion is accepting assignments while the former does not appear to have the same authority. Yerger, July 23, 2004, A.G. Op. #04-0312.

RESEARCH REFERENCES

ALR.

Substitution of judge in state criminal trial. 45 A.L.R.5th 591.

Construction and validity of state provisions governing designation of substitute, pro tempore, or special judge. 97 A.L.R.5th 537.

Law Reviews.

Recent Trends in Mississippi Judicial Rule Making: Court Power, Judicial Recusals, and Expert Testimony, 23 Miss. C. L. Rev. 1, Fall, 2003.

§ 9-1-107. Senior judges.

(1) Retired Court of Appeals, chancery, circuit or county court judges or retired Supreme Court Justices, who have served as a judge or justice for at least six (6) years and who are either at least sixty-two (62) years of age or are receiving state retirement benefits and who desire to be designated as senior judges of the State of Mississippi shall file a certificate for such designation with the Supreme Court. The certificate shall be in such form as prescribed by the Supreme Court. The filing of such certificate shall place such judge on senior status.

(2) If judges who are placed on senior status are receiving retirement benefits by virtue of the provisions of the Public Employees' Retirement Law of 1952, appearing as Sections 25-11-1 through 25-11-139, Mississippi Code of 1972, such benefits shall not be reduced in any sum whatsoever because of being placed on senior status or because of service as a special judge, pursuant to Section 9-1-105, nor shall any sum be deducted as contributions toward retirement under such law.

(3) The Supreme Court shall have the authority to promulgate rules and regulations governing the service and tenure of senior judges on senior status, and may remove from senior status any judge who does not comply with the dictates of this statute or who, without good cause, refuses appointment under Section 9-1-105.

(4) Any person appointed as senior judge on senior status hereunder shall, for the period of his service as a special judge pursuant to Section 9-1-105, receive compensation from the state for each day's service a sum equal to 1/260 of the current salary in effect for the judicial offices. Any person appointed as a senior judge on senior status shall be reimbursed for travel expenses incurred in the performance of the official duties to which he may be appointed hereunder in the same manner as other public officials and employees as provided by Section 25-3-41, Mississippi Code of 1972. Each judge so serving shall make out an itemized account of the number of days he in good faith served, and make affidavit to same and file it with the Clerk of the Supreme Court. The said clerk shall issue a certificate showing the length of time such senior judge or judges on senior status served, and the Department of Finance and Administration shall issue its warrant therefor.

(5) During tenure as a senior judge, senior judges shall be deemed active members of the Mississippi Conference of Judges and shall be required to satisfy the requirements of continuing judicial education.

HISTORY: Laws, 1989, ch. 587, § 4; Laws, 1993, ch. 518, § 18; Laws, 2001, ch. 348, § 1; Laws, 2016, ch. 377, § 1, eff from and after passage (approved Apr. 6, 2016).

Editor's Notes — Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

On March 1, 2002, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 348, § 1.

Cross References — Appointment of special judges to serve on emergency basis, see § 9-1-105.

Recall of retired supreme court justices, see § 9-3-6.

Services of retired Supreme Court Judges, see § 9-3-12.

CHAPTER 3.

SUPREME COURT

General Provisions. 9-3-1
Rule-Making. 9-3-61

GENERAL PROVISIONS

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9-3-3. Terms of court.
9-3-5. Adjournment, if judges absent; special terms; discontinuances.
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§ 9-3-1. Districts.

The state shall be divided into three (3) Supreme Court districts, as follows, to wit:

The counties of Bolivar, Claiborne, Copiah, Hinds, Holmes, Humphreys, Issaquena, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Noxubee, Rankin, Scott, Sharkey, Sunflower, Warren, Washington and Yazoo shall constitute the First District.

The counties of Adams, Amite, Clarke, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Jackson, Jasper, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Pearl River, Perry, Pike, Simpson, Smith, Stone, Walthall, Wayne, and Wilkinson shall constitute the Second District.

The counties of Alcorn, Attala, Benton, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, DeSoto, Grenada, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Webster, Winston and Yalobusha, shall constitute the Third District.

HISTORY: Codes, Hutchinson's 1848, ch. 55, art. 11 (1); 1857, ch. 63, art. 1; 1871, § 402; 1880, § 1397; 1892, § 4337; 1906, § 4900; Hemingway's 1917, § 3179; 1930, § 3357; 1942, § 1941; Laws, 1987, ch. 491, § 1, eff from and after December 14, 1987 (the date the United States Attorney General interposed no objection to the amendment).

Cross References — Civil practice and procedure provisions common to courts, see § 11-1-1 et seq.

Provisions for filling vacancies in the office of judge of the Supreme Court, see § 23-15-849.

JUDICIAL DECISIONS

1. In general.

State system of electing judges to Supreme Court, including at-large, multimember features, and east-to-west district lines dividing state into three districts did not dilute black voting strength, and did not violate § 2 of Federal Voting Rights Act of 1965. Magnolia Bar Ass'n v. Lee, 793 F. Supp. 1386, 1992 U.S. Dist. LEXIS 10889 (S.D. Miss. 1992), aff'd, 994 F.2d 1143, 1993 U.S. App. LEXIS 17043 (5th Cir. Miss. 1993).

RESEARCH REFERENCES

ALR.

Power of court to impose standard of personal appearance or attire. 73 A.L.R.3d 353.

§ 9-3-3. Terms of court.

A term of the supreme court shall be held twice in each year in the city of Jackson, to be styled the Supreme Court; and the terms shall commence the second Monday of September and the first Monday of March, and the court shall be kept open for the discharge of business for at least nine months of every year if the business therein should require.

HISTORY: Codes, Hutchinson's 1848, ch. 55, arts. 11 (1), 12; 1857, ch. 63, art. 4; 1871, § 405; 1880, § 1398; 1892, § 4338; 1906, § 4901; Hemingway's 1917, § 3180; 1930, § 3358; 1942, § 1942; Laws, 1922, ch. 140.

Editor's Notes — This section is modified or supplanted by Rule 26(d), Mississippi Rules of Appellate Procedure, as indicated in Appendix II, Statutes Modified or Supplanted, to those Rules.

Cross References — Exemption of the judiciary from provisions of open meetings law, see § 25-41-3.

Period of time for filing unaffected by expiration of term of court, see Miss. R. App. P. 26.

JUDICIAL DECISIONS

1. In general.

Appeal would not be reinstated, where motion to reinstate was made after term at which appeal was dismissed and no special circumstances were shown excusing delay. Lampton v. Stevens, 173 Miss. 316, 160 So. 274, 1935 Miss. LEXIS 199 (Miss. 1935).

Appellant should apply for certiorari directing clerk to send up record, on clerk's failure to certify record within time prescribed by law. Lovett v. Harrison, 162 Miss. 814, 137 So. 471, 1931 Miss. LEXIS 102 (Miss. 1931).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Courts § 37.

CJS.

21 C.J.S., Courts §§ 148, 149.

§ 9-3-5. Adjournment, if judges absent; special terms; discontinuances.

If, at the commencement of any regular term, a quorum of the judges shall not be present, it shall be the duty of the clerk to adjourn the court from day to day, by an entry of the fact on the minute-book, for twelve juridical days; and if a quorum of the judges shall not appear by the thirteenth day, and if there should not be a clerk, or he shall not be in attendance, any of the judges of the court in attendance may adjourn it from day to day for twelve juridical days, but if two of the judges shall so order, the court shall stand adjourned to a later day, and notice of the order shall be published, as for a special term. And if there be a failure of the term, it shall be the duty of the judges, or any two of them, to order a special term, at such time as they may appoint, notice of which shall be published in a newspaper published in the city of Jackson, if there be one, and, if not, in some newspaper published at some other place in the state, for three weeks. And after a term has regularly commenced, the court, or any of the judges, may adjourn the court from day to day or from time to time, as may be necessary and proper; and there shall not be a discontinuance of any suit, process, matter, or thing, returned or pending in the court, because a sufficient number of judges shall not attend at the commencement of the term, or at any other day to which the court may have been adjourned; and in case a quorum of judges should not be present at any day to which the court may have been adjourned during a term, a further adjournment may be ordered.

HISTORY: Codes, Hutchinson's 1848, ch. 55, art. 2 (26); 1857, ch. 63, art. 6; 1871, § 407; 1880, § 1400; 1892, § 4340; 1906, § 4904; Hemingway's 1917, § 3183; 1930, § 3359; 1942, § 1943.

RESEARCH REFERENCES

ALR.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am. Jur.
20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

CJS.
21 C.J.S., Courts §§ 157-159, 161-163.

§ 9-3-6. Recall of retired Supreme Court justices; compensation.

(1) The Supreme Court shall have the authority to request any supreme court justice who has retired from the court, except by defeat at the polls, to return to active service on an emergency basis.

(2) It shall be the duty of such recalled judge, who consents to serve, to assist the court in the disposition of causes pending in the court and in the determination of causes presented to the court, under such rules and regulations as the supreme court may adopt. However, such judge shall not be entitled to vote in the decision of any case heard by the Supreme Court.

(3) No such recalled judge may, during any fiscal year, receive compensation in excess of twenty-five percent (25%) of the current salary in effect for an associate justice of the Supreme Court. While serving under this section, such judge shall be compensated at the monthly rate of a regular supreme court justice.

(4) If such recalled judge is receiving retirement benefits by virtue of the provisions of the Public Employees' Retirement Law of 1952, appearing as Sections 25-11-1 through 25-11-139, Mississippi Code of 1972, such benefits shall not be reduced in any sum whatsoever because of such service, nor shall any sum be deducted as contributions toward retirement under said act.

(5) The Supreme Court may, by order spread upon its minutes, give a name or title to the judicial positions created by the provisions of this section.

HISTORY: Laws, 1981, ch. 360, § 1; reenacted, Laws, 1984, ch. 449, eff from and after July 1, 1984.

Cross References — Appointment of special judges to serve on emergency basis, see § 9-1-105.

Designation of certain retired judges as Senior Judges, see § 9-1-107.

Services of retired Supreme Court Judges, see § 9-3-12.

RESEARCH REFERENCES

Am. Jur.
46 Am. Jur. 2d, Judges §§ 15, 223–225.

§ 9-3-7. How cost of notices paid.

The cost of publishing the notices by order of the judges shall be paid out of the appropriation for the judicial department, and the auditor shall issue a warrant therefor on the order of the supreme court allowing the account for making the publication.

HISTORY: Codes, 1880, § 1401; 1892, § 4341; 1906, § 4905; Hemingway's 1917, § 3184; 1930, § 3360; 1942, § 1944.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 9-3-9. Jurisdiction of the court.

The Supreme Court shall have such jurisdiction as properly belongs to a court of appeals, and shall hear and determine all manner of pleas, complaints, motions, causes, and controversies, civil and criminal, which are now pending therein, or which may be brought before it, and which shall be cognizable in said court; but a cause shall not be removed into said court until after final judgment in the court below, except as provided by Section 9-4-3, or in cases particularly provided for by law; and the Supreme Court may grant new trials and correct errors of the circuit court in granting or refusing the same.

Provided, however, the Supreme Court shall have such original and appellate jurisdiction as may be otherwise provided by law in cases and proceedings for modification of any rates charged or sought to be charged to the public by any public utility.

HISTORY: Codes, Hutchinson's 1848, ch. 55, art. 2 (5), ch. 61, art. 7 (1); 1857 ch. 61, art. 166, ch. 63, art. 8; 1871, §§ 409, 648; 1880, §§ 1405, 1720; 1892, § 4345; 1906, § 4909; Hemingway's 1917, § 3187; 1930, § 3361; 1942, § 1945; Laws, 1983, ch. 467, § 2; Laws, 1993, ch. 518, § 19, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Jurisdiction of chancery courts in general, see § 9-5-81.

Jurisdiction of circuit courts generally, see §§ 9-7-81 et seq.

Jurisdiction of county court, see § 9-9-21.

Civil practice and procedure provisions applicable to courts, see §§ 11-1-1 et seq.

Appeals from denial of applications to register as an elector, see §§ 23-15-61 through 23-15-79.

Appeal to the Supreme Court of a determination of a contest of a primary election, see § 23-15-933.

Judicial review of final decisions of employee appeals board, see § 25-9-132.

Appeals to Supreme Court in school board cases, see § 37-65-129.

Appeals from chancery courts from decisions as to disciplining of nurses, see § 73-15-31.

Appeals from chancery courts in proceedings involving licenses or permits issued by state board of pharmacy, see § 73-21-101.

Appeals to Supreme Court in criminal cases, see §§ 99-35-101 et seq.

JUDICIAL DECISIONS

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1. Jurisdiction in general.

Jury did not return proper verdict as it was instructed to find for either the husband and wife or the driver, but by its verdict, the jury did neither; only then was the circuit judge authorized to enter a judgment upon that verdict, and since there was no proper verdict, it was improper for the circuit judge to enter a final judgment, and the appellate court did not have jurisdiction under Miss. Code Ann. § 9-3-9. Baham v. Sullivan, 924 So. 2d 580, 2005 Miss. App. LEXIS 1032 (Miss. Ct. App. 2005).

The Supreme Court's authority to impose sanctions on a judge is not dependant upon the recommendations of the Commission on Judicial Performance. The Supreme Court has full jurisdiction to increase or diminish sanctions based on its review of the record made before the commission. In re Collins, 524 So. 2d 553, 1987 Miss. LEXIS 2932 (Miss. 1987).

The Supreme Court has no jurisdiction where there had ceased to be a controversy. Insured Sav. & Loan Asso. v. State, 242 Miss. 547, 135 So. 2d 703, 1961 Miss. LEXIS 592 (Miss. 1961).

Supreme Court cannot temporarily suspend its jurisdiction, confer the same on a circuit court to pass upon a matter, and, after it has done so, to report back to, and reinvest the Supreme Court with jurisdiction. Copeland v. Robertson, 236 Miss. 95, 108 So. 2d 419, 1959 Miss. LEXIS 299 (Miss. 1959).

On appeal to Supreme Court, it is primary duty of court to determine ex mero motu its jurisdiction of cause. Roach v. Black Creek Drainage Dist., 206 Miss. 794, 41 So. 2d 5, 1949 Miss. LEXIS 301 (Miss. 1949).

What properly belongs to a court of appeals depends on consideration of public policy, and is mainly to be determined by the legislature. The legislature has the power to make a decision of a lower court final. Dismukes v. Stokes, 41 Miss. 430, 1867 Miss. LEXIS 15 (Miss. 1867), but see De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

2. —Original jurisdiction.

Supreme Court would not act as trial court and would not invoke its discretionary jurisdiction to hear Governor's petition, brought in his capacity as Governor and Administrator of Medicaid Division, for mandamus or prohibition to prevent Attorney General from proceeding with suit against tobacco companies for reimbursement of medicaid expenditures on ground that he lacked authority to do so. In re Fordice, 691 So. 2d 429, 1997 Miss. LEXIS 104 (Miss. 1997).

The Supreme Court has original jurisdiction to issue a writ of prohibition. State v. Maples, 402 So. 2d 350, 1981 Miss. LEXIS 2151 (Miss. 1981).

3. —Cases commenced in justice of the peace court.

Supreme Court has no jurisdiction where circuit court acquired no jurisdiction on appeal from police justice of city, and may dismiss on its own motion. Rodgers v. Hattiesburg, 99 Miss. 639, 55 So. 481, 1911 Miss. LEXIS 234 (Miss. 1911).

Supreme Court has no jurisdiction on appeal where no judgment of justice of peace is filed in circuit court. Rayborn v. Cothern, 43 So. 70 (Miss. 1907), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929); Jones v. State, 47 So. 479 (Miss. 1908); Murphy v. Hutchinson, 47 So. 666 (Miss. 1908), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929); Donald Bros. Mercantile Co. v. Marsh, 48 So. 230 (Miss. 1909).

The Supreme Court has no jurisdiction of a suit begun in the court of a justice of the peace where the record does not show the proceedings in that court nor a bond for appeal to the circuit court, and the case will be dismissed by the Supreme Court of its own motion. Ruff v. Montgomery, 83 Miss. 184, 35 So. 465, 1903 Miss. LEXIS 30 (Miss. 1903), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929).

The Supreme Court has no jurisdiction of a case begun in the court of a justice of the peace, unless the circuit court had jurisdiction. Ball, Brown & Co. v. Sledge, 82 Miss. 747, 35 So. 214, 1903 Miss. LEXIS 199 (Miss. 1903), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929).

The Supreme Court has jurisdiction of an appeal by a claimant from the circuit court in cases originating in a justice's court where the property claimed exceeds fifty dollars in value and has been by the circuit court subjected to execution for more than that sum, although the amount in controversy in the original suit was less than fifty dollars. Andrews v. Partee, 79 Miss. 80, 29 So. 788, 1901 Miss. LEXIS 9 (Miss. 1901).

4. —Advisory opinions.

The Supreme Court does not give advisory opinions. Gangloff v. State, 232 Miss. 395, 99 So. 2d 461, 1958 Miss. LEXIS 285 (Miss. 1958).

Motion filed, as a suggestion of error, for advisory opinion which may be of advantage to the administration of justice by clarification of certain matters must be overruled when no action by Supreme Court is sought by way of changing the judgment rendered or otherwise than an advisory opinion. Gipson v. State, 203 Miss. 434, 35 So. 2d 327, 1948 Miss. LEXIS 289 (Miss. 1948).

The importance of questions submitted does not give to Supreme Court power to render advisory opinions which it does not have under the Constitution and law. Gipson v. State, 203 Miss. 434, 35 So. 2d 327, 1948 Miss. LEXIS 289 (Miss. 1948).

The Supreme Court has no power or duty to render advisory opinions. Van Norman v. Barney, 199 Miss. 581, 25 So. 2d 324, 1946 Miss. LEXIS 228 (Miss. 1946); Sheldon v. Ladner, 205 Miss. 264, 38 So. 2d 718, 1949 Miss. LEXIS 428 (Miss. 1949).

5. —Title to property.

Supreme Court has no jurisdiction to make conclusive adjudication of title to property on appeal of proceeding under Code 1942, § 948, begun in justice of peace court, where neither justice of peace court nor circuit court on appeal had jurisdiction to make final and conclusive adjudication of title to property as between parties to litigation. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Supreme Court, circuit courts, chancery courts and county courts, when acting on appeal from a special possessory court of a justice or justices of peace, have only such jurisdiction to adjudicate regarding title to land as is vested in special court from which appeal was taken. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

6. —Other particular matters.

The Supreme Court has subject matter jurisdiction to hear an appeal by the State from a dismissal with prejudice for violation of § 99-17-1's 270-day rule under § 99-35-103(a). State v. Harrison, 648 So. 2d 66, 1994 Miss. LEXIS 633 (Miss. 1994).

Although the Rules of Discipline for the Mississippi Bar provide for reinstatement through petition, an order of automatic reinstatement is within the scope of the Supreme Court's exclusive and inherent jurisdiction of attorney discipline matters. Broome v. Mississippi Bar, 603 So. 2d 349, 1992 Miss. LEXIS 385 (Miss. 1992).

Unless some property rights are involved, civil courts have no jurisdiction over ecclesiastical controversy and are without jurisdiction to decide who is, or who ought to be, presiding bishop of the diocese. Conic v. Cobbins, 208 Miss. 203, 44 So. 2d 52, 1950 Miss. LEXIS 240 (Miss. 1950).

Provision in church manual permitting bishops to retain 10% of all monies raised by them in their respective dioceses does not give an ousted bishop such property rights in monies raised by his successor in the diocese as to entitle him to invoke jurisdiction of civil courts as to the 10% claimed by him. Conic v. Cobbins, 208 Miss. 203, 44 So. 2d 52, 1950 Miss. LEXIS 240 (Miss. 1950).

An application to file a bill of review based on newly discovered evidence, even after affirmance by the Supreme Court of the decree sought to be avoided, should be made to the chancery court which rendered the decree and not to the Supreme Court. Hall v. Waddill, 78 Miss. 16, 27 So. 936, 1900 Miss. LEXIS 71 (Miss. 1900).

7. Right of review.

Where defendant did not cite any authority to support his claim that he was entitled to jury instruction on lesser included offense of simple assault, claim was barred. Hoops v. State, 681 So. 2d 521, 1996 Miss. LEXIS 433 (Miss. 1996).

Supreme Court is not under obligation to review all capital murder sentences to determine whether death sentence is appropriate in particular case, but Court must determine whether sentence is excessive or disproportionate to penalty imposed in similar cases. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Supreme Court has judicial review of any action by the Mississippi Gaming Commission that exceeds its statutory authority. Casino Magic Corp. v. Ladner, 666 So. 2d 452, 1995 Miss. LEXIS 651 (Miss. 1995).

The State did not have the authority to appeal from an order granting a judgment notwithstanding the verdict rendered by the trial court to the defendant in a criminal case. State v. Insley, 606 So. 2d 600, 1992 Miss. LEXIS 532 (Miss. 1992).

An order revoking a suspension of sentence is not appealable. Kittrell v. State, 201 Miss. 514, 29 So. 2d 313, 1947 Miss. LEXIS 412 (Miss. 1947).

Appeal by plaintiff from judgment of circuit court is barred by acceptance of payment of judgment. Adams v. Carter, 92 Miss. 579, 47 So. 409, 1908 Miss. LEXIS 255 (Miss. 1908), but see Davis v. Noblitt & Capers Electric Co., 594 So. 2d 610, 1992 Miss. LEXIS 65 (Miss. 1992).

The Supreme Court has no jurisdiction of an appeal prosecuted by a municipality from a judgment of the circuit court discharging one arrested for violating an ordinance of the municipality. City of Water Valley v. Davis, 73 Miss. 521, 19 So. 235, 1895 Miss. LEXIS 156 (Miss. 1895).

8. Standing.

Owners of residential property located near property that was rezoned by the city had standing to appeal from a decision of the circuit court regarding the rezoning classification since the value of their property might be affected by the zoning of the subject property. Luter v. Oakhurst Associates, Ltd., 529 So. 2d 889, 1988 Miss. LEXIS 332 (Miss. 1988).

A municipal taxpayer and owner of property rezoned by the city had standing to prosecute an appeal from the circuit court's reversal of the city's decision to rezone, and was a proper party appellant. Luter v. Hammon, 529 So. 2d 625, 1988 Miss. LEXIS 336 (Miss. 1988).

Objection of multifariousness in enjoining makers and assignees of notes not considered on appeal where only makers can be prejudiced and they make no complaint. Coast Realty & Colony Co. v. Security Trust Co., 118 Miss. 690, 79 So. 848, 1918 Miss. LEXIS 121 (Miss. 1918).

9. Filing of appeal.

Where the judgment of the court complained of in a personal injury action was entered on the minutes of the court on September 8th, 1939, the court adjourned on September 22nd, 1939, an appeal bond filed and approved on March 21, 1930, more than six months after the entry of judgment but less than six months after the adjournment of the court, was not filed within time, the six months' limitation on the time within which to appeal from the judgment beginning on the day after it was rendered. Johnson v. Mississippi Power Co., 189 Miss. 67, 196 So. 642, 1940 Miss. LEXIS 111 (Miss. 1940).

Statutes limiting time for appeals are mandatory and jurisdictional. Turner v. Simmons, 99 Miss. 28, 54 So. 658, 1910 Miss. LEXIS 7 (Miss. 1910).

Where appeal, in case involving rights of the parties to an office, is not filed in time for court to decide question while their rights are existent, and when the case is reached neither is entitled to it, the case will be dismissed. Pafhausen v. State, 94 Miss. 103, 47 So. 897, 1908 Miss. LEXIS 29 (Miss. 1908).

Where appeal bond filed within two years but citation not served on appellee nor transcript filed in Supreme Court within that time, the appeal will be dismissed. Beasley v. Cottrell, 94 Miss. 253, 47 So. 662, 1908 Miss. LEXIS 22 (Miss. 1908).

10. Filing of cross-appeal.

Where defendant did not prosecute a cross-appeal from a judgment assessing him with costs of the appeal to circuit court and the cost of the trial de novo therein, such judgment is final, even if the cause should be affirmed. Douglas v. Warren, 44 So. 2d 853 (Miss. 1950).

Supreme court refused to review chancellor's refusal to grant complainant damages in action to quiet title on defendant's appeal where no cross-appeal was filed by complainant. Duncan v. Mars, 44 So. 2d 529 (Miss. 1950).

In absence of cross-appeal and appellee's declaration failing to demand full amount sheriff could have successfully sued for as fees for serving overseers' commissions, supreme court cannot increase judgment, but will affirm judgment recovered. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

No cross-appeal lies from judgment by which appellee obtains in trial court amount demanded by his declaration. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

No cross-appeal is necessary to obtain judgment in supreme court for fees fixed by statute when amount approved by supreme court is less than amount awarded appellee in trial court. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

Appellee may file cross assignment of error. Webb Sumner Oil Mill v. Southern Coal Co., 129 Miss. 127, 91 So. 698, 1922 Miss. LEXIS 15 (Miss. 1922).

Cross appeal and cross assignment of errors not considered where filed after submission of case. Reid v. Yazoo & M. V. R. Co., 94 Miss. 639, 47 So. 670, 1909 Miss. LEXIS 323 (Miss. 1909).

11. Effect of appeal.

Lower court without power to proceed further with trial until appeal disposed of.

Jennings v. Shapira, 131 Miss. 596, 95 So. 305, 1923 Miss. LEXIS 198 (Miss. 1923).

12. Matters reviewable in general.

Defendant's double jeopardy claim was properly before the appellate court because it was considered a final judgment pursuant to Miss. Code Ann. § 11-51-3. Roberson v. State, 856 So. 2d 532, 2003 Miss. App. LEXIS 404 (Miss. Ct. App.), cert. denied, 859 So. 2d 1017, 2003 Miss. LEXIS 569 (Miss. 2003).

Supreme Court can only review matters on appeal as were considered by lower court. Ditto v. Hinds County, 665 So. 2d 878, 1995 Miss. LEXIS 585 (Miss. 1995).

Supreme Court may not act upon or consider matters which do not appear in record and must confine itself to what actually does appear in record. Ditto v. Hinds County, 665 So. 2d 878, 1995 Miss. LEXIS 585 (Miss. 1995).

The issue of whether the interrogation of a juvenile without the presence of his mother was violative of statutory law was not moot and would be addressed on appeal, even though the juvenile's sentence of 6 months' probation had been completed, since appellate review of the issue was necessary in order to avoid future repetition by law enforcement officers. M.A.C. v. Harrison County Family Court, 566 So. 2d 472, 1990 Miss. LEXIS 449 (Miss. 1990).

Assignment of error not considered where decision will not affect right of appellant. Ramsay v. Ramsay, 125 Miss. 185, 87 So. 491, 1921 Miss. LEXIS 113 (Miss. 1921).

Supreme Court on determining bill without equity will not retain case because of great public importance in order to settle principles. Lampton v. Edwards, 54 So. 245 (Miss. 1911).

Question settled by Supreme Court not open for review unless resulting evil is manifest and mischievous. Moss Point Lumber Co. v. Board of Sup'rs, 89 Miss. 448, 42 So. 290, 1906 Miss. LEXIS 103 (Miss. 1906).

13. —Moot issues.

Although judicial discipline proceeding was moot insofar as it required that judge leave office since he had already left office and was not a candidate for reelection, Supreme Court would hear case given that judicial conduct is a matter of great public interest and Supreme Court decisions on same serve as guide for entire judiciary. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

An appeal from a judgment affirming a decision of the board of trustees of a school district to expel a student was not rendered moot by the student's completion of the semester while the appeal was pending. The expulsion, if upheld, should have as its legal consequence the nullification of the student's credit for the semester in question, thus the case is not moot. Furthermore, school expulsions or suspensions are, in most instances, capable of repetition yet evade review. Jones v. Board of Trustees, 524 So. 2d 968, 1988 Miss. LEXIS 189 (Miss. 1988).

Supreme Court will not adjudicate moot questions and will not render judgment which is unenforceable and useless. Sheldon v. Ladner, 205 Miss. 264, 38 So. 2d 718, 1949 Miss. LEXIS 428 (Miss. 1949).

Appeal in suit to enjoin election not entertained after election is held. McDaniel v. Hurt, 92 Miss. 197, 41 So. 381, 190 Miss. LEXIS 3 (Miss. 1906).

14. —Jurisdiction.

If chancellor sustains demurrer to bill in equity on ground of no equity jurisdiction and declines jurisdiction when in fact case is good one in equity, his action is reviewable by Supreme Court. McClendon v. Mississippi State Highway Com., 205 Miss. 71, 38 So. 2d 325, 1949 Miss. LEXIS 413 (Miss. 1949).

Question of whether chancery court has full or general jurisdiction of proceedings to remove disabilities of minority under § 159(f), Constitution of 1890, because chancery court was invested with jurisdiction for removal of disabilities of minority when Constitution became effective will not be passed on by Supreme Court when another decisive question will dispose of case. Dyer v. Russell, 204 Miss. 719, 38 So. 2d 104, 1948 Miss. LEXIS 400 (Miss. 1948).

The question of sufficiency of process may be raised in the Supreme Court for the first time. Khoury v. Saik, 203 Miss. 155, 33 So. 2d 616, 1948 Miss. LEXIS 244 (Miss. 1948).

Whether cross bill presents matter of common law or equity jurisdiction will not be first considered on appeal. Schaff v. Kahn & Bernstein, 121 Miss. 412, 83 So. 622, 1919 Miss. LEXIS 176 (Miss. 1919).

Order of chancellor sustaining demurrers to bill and ordering transfer to the circuit court is appealable. Robertson v. F. Goodman Dry Goods Co., 115 Miss. 210, 76 So. 149, 1917 Miss. LEXIS 203 (Miss. 1917).

Defendant not objecting to jurisdiction of chancery court and filing cross bill held estopped on appeal from questioning jurisdiction. Indianola Compress & Storage Co. v. Southern R. Co., 110 Miss. 602, 70 So. 703, 1915 Miss. LEXIS 88 (Miss. 1915).

Question of jurisdiction may be raised at any time. Gardner v. New Orleans & N. E. R. Co., 78 Miss. 640, 29 So. 469, 1900 Miss. LEXIS 160 (Miss. 1900), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929); Ruff v. Montgomery, 83 Miss. 184, 35 So. 465, 1903 Miss. LEXIS 30 (Miss. 1903), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929); McPhail v. Blann, 47 So. 666 (Miss. 1908), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929); Greenwood v. Weaver, 96 Miss. 604, 50 So. 981, 1910 Miss. LEXIS 154 (Miss. 1910); Rodgers v. Hattiesburg, 99 Miss. 639, 55 So. 481, 1911 Miss. LEXIS 234 (Miss. 1911); Xydias v. Pellman, 121 Miss. 400, 83 So. 620, 1919 Miss. LEXIS 174 (Miss. 1919); Brasham v. State, 140 Miss. 712, 106 So. 280, 1925 Miss. LEXIS 306 (Miss. 1925).

15. —Process.

Writ of seizure returnable in middle of term of circuit court is triable at next succeeding term, and judgment entered at term at which return is erroneous, and though not subject to collateral attack may be corrected by appeal. Willsford v. Meyer-Kiser Corp., 139 Miss. 387, 104 So. 293, 1925 Miss. LEXIS 165 (Miss. 1925).

Lower court may after appeal correct sheriff's return so as to show valid service and such amendment will be considered by appellate court. H. Lupkin & Sons v. Russell, 108 Miss. 742, 67 So. 185, 1914 Miss. LEXIS 267 (Miss. 1914).

16. —Rulings on particular motions.

Where a trial court has granted an additur or, in the alternative, a new trial on the issue of damages only, the defendant only may elect (1) to reject the additur and have the case retried on the issue of damages only, (2) to appeal to the Supreme Court on grounds that the trial court should not have granted the additur at all or, alternatively, that the additur granted was legally excessive, or (3) to accept the additur and pay the judgment; the plaintiff can only appeal to the Supreme Court arguing that the trial court abused its discretion and that the additur is legally inadequate. Odom v. Roberts, 606 So. 2d 114, 1992 Miss. LEXIS 559 (Miss. 1992).

Where a trial court has granted a remittitur or, in the alternative, a new trial on the issue of damages only, the plaintiff only may elect (1) to reject the remittitur and have the case retried on the issue of damages only, (2) to appeal to the Supreme Court on grounds that the circuit court should not have granted the remittitur at all or, alternatively, that the remittitur granted was legally excessive, or (3) to accept the remittitur; in such a case, the defendant's only procedural avenue is to appeal to the Supreme Court arguing that the trial court abused its discretion and that the remittitur was legally inadequate. Odom v. Roberts, 606 So. 2d 114, 1992 Miss. LEXIS 559 (Miss. 1992).

Where a trial court has denied a remittitur, the defendant may appeal to the Supreme Court on grounds that the trial court abused its discretion in failing to order the remittitur and, if the defendant can convince the Supreme Court on that score, the defendant may argue that the damage award be reduced to such an amount as would no longer be contrary to the overwhelming weight of the credible evidence; if the defendant should be successful, the plaintiff would then have the option of accepting the remittitur or going to trial again on the issue of damages only. Odom v. Roberts, 606 So. 2d 114, 1992 Miss. LEXIS 559 (Miss. 1992).

Where a trial court has denied a plaintiff's motion for an additur, the plaintiff may appeal on grounds that the trial court abused its discretion in failing to order an additur, whereupon it becomes incumbent upon the Supreme Court, if it finds that the trial court did abuse its discretion, to order an additur up to the point where the verdict is no longer so low that it is contrary to the overwhelming weight of the credible evidence; the right to accept the additur (and pay the judgment) on pain of a new trial on damages only lies exclusively with the defendant. Odom v. Roberts, 606 So. 2d 114, 1992 Miss. LEXIS 559 (Miss. 1992).

Where demurrer improperly sustained as to one of two counts of declaration, appellate court will not pass on question presented by other. Hudson v. Mississippi C. R. Co., 95 Miss. 41, 48 So. 289, 1909 Miss. LEXIS 204 (Miss. 1909).

Overruling accused's objection to bill of particulars not reviewed on appeal unless gross abuse of discretion shown. Richberger v. State, 90 Miss. 806, 44 So. 772, 1907 Miss. LEXIS 122 (Miss. 1907).

17. —Instructions.

In employee's suit against employer for damages for wrongful discharge, where no appeal is taken by employee from judgment entered pursuant to peremptory instruction to return verdict for unpaid salary to date of judgment, correctness of the instruction, which resulted in disallowance of incidental damages claimed by employee, is not before the Supreme Court. Masonite Corp. v. Handshoe, 208 Miss. 166, 44 So. 2d 41, 1950 Miss. LEXIS 238 (Miss. 1950).

Peremptory instruction granted, marked and filed became part of record and reviewable on appeal. McCorkle v. Illinois C. R. Co., 101 Miss. 124, 57 So. 419, 1911 Miss. LEXIS 106 (Miss. 1911).

18. —Other particular matters.

Once a judge has exercised his or her discretion and determined that a juror probably could not be impartial, that determination may not be assigned on appeal as error. Coverson v. State, 617 So. 2d 642, 1993 Miss. LEXIS 168 (Miss. 1993).

Decision of judge as to legality of place designated for holding court other than the regular court house not open to collateral attack. Brookhaven Lumber & Mfg. Co. v. Adams, 132 Miss. 689, 97 So. 484, 1923 Miss. LEXIS 101 (Miss. 1923).

Judgment dismissing action for untruthfulness of allegation of poverty in affidavit in lieu of security for costs is reviewable by Supreme Court. Feazell v. Soltzfus, 98 Miss. 886, 54 So. 444 (Miss. 1910).

19. Presentation and objection in lower court, necessity of.

Where party against whom motion for summary judgment is made wishes to attack one or more of affidavits upon which motion is based, he must file in trial court motion to strike affidavit, and failure to file motion to strike constitutes waiver of any objection to affidavit. Travis v. Stewart, 680 So. 2d 214, 1996 Miss. LEXIS 530 (Miss. 1996).

Objection to use of affidavit in connection with summary judgment motion may not be raised for first time on appeal. Travis v. Stewart, 680 So. 2d 214, 1996 Miss. LEXIS 530 (Miss. 1996).

Failure to raise a specific objection to testimony at trial will result in a waiver of this point on appeal. Jones v. State, 678 So. 2d 707, 1996 Miss. LEXIS 411 (Miss. 1996).

Although the justice of the peace or the mayor or the police justice, in appeals from their courts, are required to transmit to the proper clerk a certified copy of the record of the proceedings, if no objection is made to the transcript before or during the trial of the case on its merits, it will be conclusively presumed that the transcript was before the court and complied in every respect with the law, and no error can be predicated on that ground on appeal to the supreme court. Whittington v. State, 218 Miss. 631, 67 So. 2d 515, 1953 Miss. LEXIS 581 (Miss. 1953).

Errors committed in county court, not complained of in circuit court on appeal thereto, are waived, and will not be considered in the Supreme Court. Eaton v. Hattiesburg Auto Sales Co., 151 Miss. 211, 117 So. 534, 1928 Miss. LEXIS 298 (Miss. 1928).

Question of trial errors not raised below may not be raised on appeal. De Laval

Separator Co. v. Cutts, 142 Miss. 379, 107 So. 522, 1926 Miss. LEXIS 87 (Miss. 1926).

Consideration of points first made on suggestion of error optional with court. Mars v. Germany, 135 Miss. 387, 100 So. 23, 1924 Miss. LEXIS 44 (Miss. 1924).

New points raised by suggestion of error not considered. Lusk v. Seal, 129 Miss. 228, 91 So. 386, 1922 Miss. LEXIS 4 (Miss. 1922).

20. —Issues considered on appeal.

A search and seizure question was preserved for review by the Supreme Court, even though the defendant did not use the term "Fourth Amendment" or "Section 23" at the initial suppression hearing, where there was no doubt that the defendant was seeking protection of his right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and Article 3, § 23 of the Mississippi Constitution. Longstreet v. State, 592 So. 2d 16, 1991 Miss. LEXIS 840 (Miss. 1991).

Errors affecting fundamental rights are exceptions to rule that questions not raised in the trial court cannot be raised for the first time on appeal. Brooks v. State, 209 Miss. 150, 46 So. 2d 94, 1950 Miss. LEXIS 373 (Miss. 1950).

Where defendant failed to object to search warrant when offered in evidence but did request peremptory instruction and, after trial, made motion in arrest of judgment, the Supreme Court will treat the question as though defendant made timely objection. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

Insufficiency of bigamy indictment may be raised for first time on appeal when indictment is fatally defective for failure to set forth time, place and circumstance of former marriage, or name of person with whom former marriage is alleged to have been contracted. Wash v. State, 206 Miss. 858, 41 So. 2d 29, 1949 Miss. LEXIS 307 (Miss. 1949).

21. —Issues not considered on appeal.

Party was procedurally barred from raising issue of alleged error in use of jury instruction where no contemporaneous objection was made. Lewis v. Hiatt, 683 So. 2d 937, 1996 Miss. LEXIS 632 (Miss. 1996).

Defendant's argument as to portion of jury instruction to which no objection was made at trial was procedurally barred. Tran v. State, 681 So. 2d 514, 1996 Miss. LEXIS 432 (Miss. 1996).

Defendant waived appellate review of his claim that trial court erred in allowing evidence of marijuana and syringes at his trial for possession of methamphetamine; in his objection at trial, defendant complained of relevancy of marijuana to methamphetamine charge, but on appeal, his claim was bottomed on prejudicial effect of introduction of evidence on jury's decision. (Per Smith, J., with the Chief Justice, a Presiding Justice, and one Justice concurring, two Justices concurring in result only, and a Presiding Justice concurring and joining in separate concurrence.) Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

Defendant convicted of possessing methamphetamine waived appellate review of his claim that trial court erred by refusing his instruction which correctly spoke to jury's need to find that defendant was "beyond a reasonable doubt," "aware of the presence and character of the particular substance . . . and was intentionally and consciously in possession of it"; defense counsel refused to delete portions of that proposed instruction that trial court found offending and superfluous, and defendant, without objection, refused to submit amended version upon trial court's request. Townsend v. State, 681 So. 2d 497, 1996 Miss. LEXIS 414 (Miss. 1996).

Contention by plaintiff in medical malpractice action that defendants had improperly supported motion for summary judgment with affidavit of expert witness whose identity had not previously been disclosed despite request by plaintiff for disclosure of identity and opinions of experts who would be used at trial was waived and could not be considered on appeal where plaintiff did not file motion to strike affidavit or file rebuttal affidavit. Travis v. Stewart, 680 So. 2d 214, 1996 Miss. LEXIS 530 (Miss. 1996).

Justice court judge obstructed justice where, after being served with formal complaint by Commission on Judicial Performance, he circulated order to Constables and members of staff demanding that they deliver to him official and unofficial notes and evidence relating to cases and allegations against him and that failure to abide by his orders would constitute grounds for contempt, even though judge never executed order as it was an attempt to knowingly and intentionally intimidate staff in performance of their duties and as potential witnesses against judge. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

Defendants, by failing to object at trial, waived any error in admission of police officer's testimony that he had asked one defendant, whose child died from cocaine overdose, whether cocaine was used as a tool to quiet the child. Jones v. State, 678 So. 2d 707, 1996 Miss. LEXIS 411 (Miss. 1996).

Trial issue raised for first time in defendant's rebuttal brief on appeal would not be considered. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

Court will not consider issues raised for first time in rebuttal brief on appeal; appellants cannot be allowed to ambush appellees in their rebuttal briefs, thereby denying appellees opportunity to respond to appellants' arguments. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

Mother was procedurally barred from raising on appeal claim that Chancellor erred in ordering mother and her current husband to take a drug test, the failure of which would result in change of custody, where she failed to make a contemporaneous objection. Riley v. Doerner, 677 So. 2d 740, 1996 Miss. LEXIS 287 (Miss. 1996).

Passenger's objection "for the record" to jury instruction requiring verdict for driver if jury found that one vehicle accident was "unavoidable" was not put to court in specific meaningful manner and resulted in waiver of issue on appeal. Shields v. Easterling, 676 So. 2d 293, 1996 Miss. LEXIS 307 (Miss. 1996).

The rule that questions not raised in the lower court will not be reviewed on appeal to the Supreme Court applies to the Supreme Court's review of appeals involving collateral attacks originating in the lower court as well as its review of convictions flowing in the wake of direct appeal, and is particularly true where constitutional questions are involved; thus, a post-conviction relief petitioner, by failing to attack the constitutionality of the Mississippi Uniform Post-Conviction Collateral Relief Act (§§ 99-39-1 et seq.) in the lower court, waived any error in this regard and could not seek reversal of the trial court's ruling in the Supreme Court. Patterson v. State, 594 So. 2d 606, 1992 Miss. LEXIS 42 (Miss. 1992).

A defendant failed to preserve for appeal the issue of whether the trial court abused its discretion in refusing the defendant's request for a preliminary determination as to whether his prior convictions could be used for impeachment, where the defendant did not make a proffer of the testimony that he would have offered. Settles v. State, 584 So. 2d 1260, 1991 Miss. LEXIS 456 (Miss. 1991).

Fact that judgment of conviction in prosecution for assault and battery with intent to kill and murder erroneously recites that case was tried by jury of twelve consisting of named juror and eleven others, named juror being member of regular jury panel for term but not in fact on this jury, will not be considered by supreme court on appeal when affidavits setting forth facts were filed long after motion for new trial had been overruled and after court term had adjourned, and matter was not presented to trial court for correction. Craig v. State, 208 Miss. 528, 44 So. 2d 860, 1950 Miss. LEXIS 270 (Miss. 1950).

Where suit was brought against vendor of realty for breach of warranty based on prior owner's reservation of one half of minerals and was tried on assumption that reservation was valid, Supreme Court refused to consider validity of reservation for first time on appeal. Meredith v. Pratt, 208 Miss. 412, 44 So. 2d 521, 1950 Miss. LEXIS 257 (Miss. 1950).

Where assignment of error related to improper remarks of district attorney which did not appear in the record and no special bill of exceptions was actually taken, Supreme Court refused to notice the alleged error. Page v. State, 208 Miss. 347, 44 So. 2d 459, 1950 Miss. LEXIS 254 (Miss. 1950).

Purchaser of real property who refuses to carry out contract to purchase on other grounds cannot, on appeal from judgment in favor of vendor, raise the objection to form of deed tendered that it required vendee to pay taxes, since grantor did not have opportunity to meet this objection, which he might have corrected had any request been made that he do so. Vanlandingham v. Jenkins, 207 Miss. 882, 43 So. 2d 578, 1949 Miss. LEXIS 399 (Miss. 1949).

Exclusion of evidence by trial court will not be considered on appeal when evidence offered was large box of vouchers and invoices, offered en masse, without individual consideration of their materiality, and appellant failed to offer any individual exhibit although court offered to permit any or all papers to be identified, their materiality shown and introduction then made. Shaw v. Bula Cannon Shops, Inc., 205 Miss. 458, 38 So. 2d 916, 1949 Miss. LEXIS 443 (Miss. 1949).

Objection to admission of evidence must be specific; general objection to admission of evidence overruled not considered on appeal, unless evidence was inadmissible for any purpose. Bessler Movable Stairway Co. v. Bank of Leakesville, 140 Miss. 537, 106 So. 445, 1925 Miss. LEXIS 288 (Miss. 1925).

In absence of record objection, no complaint of admission of statement will be heard. Bowman v. State, 141 Miss. 115, 106 So. 264, 1925 Miss. LEXIS 218 (Miss. 1925).

Point as to validity of Sunday contract, not raised directly or inferentially in the court below, will not be considered on appeal. Gilliam v. McLemore, 141 Miss. 253, 106 So. 99, 1925 Miss. LEXIS 213 (Miss. 1925).

Objection to revivor in administrator's name cannot be made for first time on appeal. Weaver v. Turner, 125 Miss. 250, 87 So. 641, 1921 Miss. LEXIS 114 (Miss. 1921).

Failure to object below to misnaming of complainant precluded raising point on appeal. National Surety Co. v. Board of Sup'rs, 120 Miss. 706, 83 So. 8, 1919 Miss. LEXIS 125 (Miss. 1919).

On appeal from order discharging receiver and awarding damages subsequent order of court is not reviewable. Huston v. King, 119 Miss. 347, 80 So. 779, 1919 Miss. LEXIS 7 (Miss. 1919).

Objection to want of arraignment of accused, not made in court below, not considered on appeal. Washington v. State, 93 Miss. 270, 46 So. 539, 1908 Miss. LEXIS 95 (Miss. 1908).

Rulings on admission and exclusion of evidence will not be considered on appeal where motion for new trial did not direct court's attention to particular rulings. Carpenter v. Savage, 93 Miss. 233, 46 So. 537, 1908 Miss. LEXIS 92 (Miss. 1908).

22. Motion for new trial in lower court, necessity of.

Contention that verdict in suit for property damage growing out of collision of automobiles was contrary to overwhelming weight of evidence is not properly presented for review on appeal, where no motion for new trial was filed in the lower court raising point. Gilmer v. Gunter, 46 So. 2d 447 (Miss. 1950).

The attorney general may waive motion for a new trial as a prerequisite for appeal in a criminal prosecution. Holmes v. State, 201 Miss. 509, 29 So. 2d 312, 1947 Miss. LEXIS 411 (Miss. 1947).

While motion for new trial is unnecessary to obtain review in Supreme Court, unless made on grounds which would set aside or modify judgment and could not otherwise be considered by trial judge, complaining party has right to make it, and judgment is not final until disposed of, if seasonably made. Moore v. Montgomery Ward & Co., 171 Miss. 420, 156 So. 875, 1934 Miss. LEXIS 204 (Miss.), aff'd, Moore v. Montgomery-Ward & Co., 158 So. 148 (Miss. 1934).

Failure to move for new trial defeats review as to inadequacy of damages. Tendall v. Davis, 129 Miss. 30, 91 So. 701, 1922 Miss. LEXIS 17 (Miss. 1922).

The purpose of rule 6 of the rules of the Supreme Court is to dispense with the necessity for a motion for new trial when the error assigned is based upon any ruling made in the trial, but in the absence of error in any of the rulings of the trial court, the rule in question does not dispense with the necessity for a motion for a new trial when the assignment of error is based solely upon objection to the amount of the verdict. Coccora v. Vicksburg Light & Traction Co., 126 Miss. 713, 89 So. 257, 1921 Miss. LEXIS 68 (Miss. 1921).

23. Requirement of final judgment or order.

Appellate court lacked jurisdiction to hear an appeal because a chancellor's interim judgment was interlocutory in nature and not a final, appealable judgment where the language in the interim judgment that it was a final judgment had been scratched out and initialed by the chancellor, the chancellor had apparently not ruled on a pending issue regarding attorneys' fees, and there was no final judgment certification. Lewis v. Harvey (In re Estate of Lewis), 135 So. 3d 202, 2014 Miss. App. LEXIS 141 (Miss. Ct. App. 2014).

An appeal cannot be taken in a criminal case from a verdict of the jury without the judgment and sentence of the court having been rendered. Lang v. State, 238 Miss. 677, 119 So. 2d 608, 1960 Miss. LEXIS 456 (Miss. 1960).

Without decree, no appeal will lie from chancery court to Supreme Court, and when there is no decree of any kind signed, or filed in proper office, and no application for appeal, motion to dismiss appeal must be sustained although record discloses admission by parties that interlocutory decree had been entered by chancery court. In re Graham's Estate, 208 Miss. 857, 45 So. 2d 726, 1950 Miss. LEXIS 305 (Miss. 1950).

Final judgment of circuit court is judgment adjudicating merits of controversy. Roach v. Black Creek Drainage Dist., 206 Miss. 794, 41 So. 2d 5, 1949 Miss. LEXIS 301 (Miss. 1949).

While a judgment which adjudicates everything material to the determination of the cause, and which, when executed according to its terms, will give all the relief which could be afforded is final, a necessary qualification of this rule is, that, if a motion for the setting aside of a judgment is filed before the end of the term of the court at which it was rendered, the finality of the judgment is thereby suspended and the limitation on the time for an appeal begins when, but not until, the motion is disposed of. Johnson v. Mississippi Power Co., 189 Miss. 67, 196 So. 642, 1940 Miss. LEXIS 111 (Miss. 1940).

No appeal is allowable from circuit court judgment unless in all respects final. State ex rel. Rice v. Large, 171 Miss. 330, 157 So. 694, 1934 Miss. LEXIS 253 (Miss. 1934).

Judgment, putting statute of limitations respecting appeals into operation, lacks finality until final disposition of seasonable motion for new trial or other proper motion challenging it. Moore v. Montgomery Ward & Co., 171 Miss. 420, 156 So. 875, 1934 Miss. LEXIS 204 (Miss.), aff'd, Moore v. Montgomery-Ward & Co., 158 So. 148 (Miss. 1934).

The Supreme Court is without jurisdiction of an appeal in a criminal case which is prosecuted before judgment from a verdict convicting the appellant and will of its own motion dismiss it. Hayden v. State, 81 Miss. 55, 32 So. 922, 1902 Miss. LEXIS 130 (Miss. 1902).

The court has no jurisdiction of an appeal by the state in criminal cases except from final judgments. State v. McDowell, 72 Miss. 138, 17 So. 213, 1894 Miss. LEXIS 133 (Miss. 1894).

24. —Rulings on demurrers.

Order of circuit court from which appeal was taken to effect that demurrer to petition was heard and considered and it is ordered that demurrer be sustained and petitioners praying appeal to supreme court it is ordered that same be granted is not final judgment and not appealable. Roach v. Black Creek Drainage Dist., 206 Miss. 794, 41 So. 2d 5, 1949 Miss. LEXIS 301 (Miss. 1949).

No appeal is allowable from circuit court judgment unless judgment is in all respects final, and order ruling on demurrer, which goes no further than to rule on demurrer, is no final judgment. Roach v. Black Creek Drainage Dist., 206 Miss. 794, 41 So. 2d 5, 1949 Miss. LEXIS 301 (Miss. 1949).

Supreme Court is without jurisdiction of case by appeal from order of circuit court sustaining demurrer to petition and granting appeal and case so appealed must be dismissed. Roach v. Black Creek Drainage Dist., 206 Miss. 794, 41 So. 2d 5, 1949 Miss. LEXIS 301 (Miss. 1949).

In quo warranto proceeding order merely ruling on demurrer was not appealable. State ex rel. Rice v. Large, 171 Miss. 330, 157 So. 694, 1934 Miss. LEXIS 253 (Miss. 1934).

Judgment sustaining demurrer to declaration not a final judgment. Bank of Courtland v. Long Creek Drainage Dist., 133 Miss. 531, 97 So. 881, 1923 Miss. LEXIS 161 (Miss. 1923).

Where demurrer sustained to bill and 60 days granted in which to amend, appeal then taken from order sustaining demurrer should be dismissed. Armstrong v. Moore, 112 Miss. 511, 73 So. 566, 1916 Miss. LEXIS 138 (Miss. 1916).

Sustaining demurrer and allowing thirty days to file amended bill without dismissing bill was not a final decree. Moore v. Evans, 98 Miss. 855, 54 So. 438, 1910 Miss. LEXIS 133 (Miss. 1910).

Ruling on demurrer in action at law not reviewed where no final judgment rendered by trial court. Tate County v. Bourland, 42 So. 379 (Miss. 1906).

25. —Rulings on requests for new trials.

After motion for new trial is filed, judgment finally disposing of case, prior to which no appeal to Supreme Court will lie, is judgment overruling motion for new trial. Shaw v. Bula Cannon Shops, Inc., 205 Miss. 458, 38 So. 2d 916, 1949 Miss. LEXIS 443 (Miss. 1949).

Motion for new trial suspends final judgment as a final judgment until motion is overruled, but it does not operate to revoke notice to court reporter to transcribe notes of evidence which was given according to law and at proper time, and motion to strike stenographer's transcript on ground notice was revoked should be overruled. Shaw v. Bula Cannon Shops, Inc., 205 Miss. 458, 38 So. 2d 916, 1949 Miss. LEXIS 443 (Miss. 1949).

Under the Code of 1892 the court had no jurisdiction of an appeal from an order granting a new trial until the case had been finally decided. Wood v. American Life Ins. & Trust Co., 8 Miss. 609, 1843 Miss. LEXIS 130 (Miss. 1843); Bank of Lexington v. Taylor, 10 Miss. 27, 1843 Miss. LEXIS 186 (Miss. 1843); Terry v. Robins, 13 Miss. 291, 1845 Miss. LEXIS 72 (Miss. 1845); S. & F. Dorr & Co. v. Watson & Woodhouse, 28 Miss. 383, 1854 Miss. LEXIS 185 (Miss. 1854); Brown v. Carraway, 47 Miss. 668, 1873 Miss. LEXIS 19 (Miss. 1873).

26. —Interlocutory decrees or orders.

Where disputes of fact must be settled before the law may be applied to them, an interlocutory appeal should rarely be granted. Where the question presented is one of law application, certification for appeal is not per se precluded since in some sense every question of law will likely involve some application of law to fact. Nevertheless, an interlocutory appeal ought ordinarily to be granted only where at its core the question concerns a dispute regarding the content of the applicable law, a dispute with respect to which there is a substantial basis for a difference of opinion, or where the difficulty of application makes the case the substantial equivalent of one wherein the legal principles are not well settled. American Electric, Div. of FL Industries v. Singarayar, 530 So. 2d 1319, 1988 Miss. LEXIS 418 (Miss. 1988).

The fact that a case is certified for interlocutory appeal by a lower court pursuant to Rule 5(a), Miss. Sup. Ct. R,. does not preclude a de novo review by the Supreme Court as to whether the rule's criteria have been met and whether the application for interlocutory appeal should be granted. The Supreme Court retains absolute authority to decide whether an interlocutory appeal should be granted, notwithstanding the rule's provision that the lower courts may assist in the exercise of that authority. American Electric, Div. of FL Industries v. Singarayar, 530 So. 2d 1319, 1988 Miss. LEXIS 418 (Miss. 1988).

A Rule 5(a), Miss. Sup. Ct. R., certificate for interlocutory appeal should include a statement of the question of law being certified and the prong or prongs of the rule deemed applicable. American Electric, Div. of FL Industries v. Singarayar, 530 So. 2d 1319, 1988 Miss. LEXIS 418 (Miss. 1988).

An order of a Circuit Court holding in abeyance a motion to dissolve a preliminary injunction was not appropriate for interlocutory appeal since the motion was not denied or granted, and thus there was no final order. State v. Europa Cruise Line, Ltd., 528 So. 2d 839, 1988 Miss. LEXIS 328 (Miss. 1988).

In exceptional circumstances appeals from circuit court interlocutory orders are warranted; thus, such appeals may be granted where the appeal may settle an important principle of law in the case and may advance the ultimate determination of the action, and where justice may be served without delay and expense to the litigant and the court. Sonford Products Corp. v. Freels, 495 So. 2d 468, 1986 Miss. LEXIS 2658 (Miss. 1986), overruled, Bickham v. Department of Mental Health, 592 So. 2d 96, 1991 Miss. LEXIS 978 (Miss. 1991).

Where an interlocutory appeal was taken by defendants in a suit for contract construction and specific performance, and the chancellor failed to make special findings of fact and law as requested by the complainants, and undisposed issues of law and fact existed at the time the appeal was taken, it was improvidently granted and was dismissed by the Supreme Court on the ground that the court lacked jurisdiction to act as a trial court in the decisions of propositions which should have been settled by the court below. Management, Inc. v. Crosby, 186 So. 2d 466, 1966 Miss. LEXIS 1313 (Miss. 1966).

Appeals to Supreme Court from interlocutory orders or decrees apply only to cases in chancery courts. Roach v. Black Creek Drainage Dist., 206 Miss. 794, 41 So. 2d 5, 1949 Miss. LEXIS 301 (Miss. 1949).

Appeal from interlocutory decree without allowance by the chancellor pursuant to Code 1906, § 35, (see Code 1942 § 1148), dismissed and case remanded. Greve v. McGee, 92 Miss. 190, 45 So. 706, 1907 Miss. LEXIS 23 (Miss. 1907).

27. —Other particular rulings or orders.

Chancellor's order that found father in contempt for failing to pay child support but did not determine the amount of the arrearage or the amount of future child support the father would be obligated to pay was not a final order and could not be considered on appeal. Maurer v. Boyd, 111 So. 3d 690, 2013 Miss. App. LEXIS 171 (Miss. Ct. App. 2013).

The Supreme Court was authorized to treat a circuit court's denial of a criminal defendant's motion to dismiss the indictment against him on double jeopardy grounds as a "final judgment" in a civil action under § 11-51-3, which authorizes an appeal from a final judgment, and § 9-3-9, which gives the Supreme Court jurisdiction of an appeal from any final judgment in the circuit court, since the double jeopardy claim went beyond the defendant's right not to be convicted in that it involved his constitutional right not to be prosecuted for the offense, and therefore denial of the claim was final and justified immediate determination. De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

An order for psychiatric examination of an accused to ascertain his mental capacity to stand trial is not a final judgment so as to be appealable. Jaquith v. Beckwith, 248 Miss. 491, 157 So. 2d 403, 1963 Miss. LEXIS 404 (Miss. 1963).

28. Record on appeal.

Error could not be predicated on a trial court's refusal of defense instructions where the reviewing court was not provided with a trial transcript of what transpired when the instructions were presented to the trial court; it is the duty of the appellant to see that the record of trial proceedings wherein error is claimed is brought before the reviewing court. Smith v. State, 572 So. 2d 847, 1990 Miss. LEXIS 664 (Miss. 1990).

Supreme Court will not consider matters which are not properly a part of the record before it, hence papers obtained after adjournment of trial court not presented to that court for correction will not be considered on appeal. Craig v. State, 208 Miss. 528, 44 So. 2d 860, 1950 Miss. LEXIS 270 (Miss. 1950).

The Supreme Court is without authority to consider, on motion for certiorari, a prayer that a motion for a new trial made after adjournment of the term be sent up and incorporated into the appeal record. Dobbs v. State, 200 Miss. 595, 27 So. 2d 551, 29 So. 2d 84, 1946 Miss. LEXIS 330, 1947 Miss. LEXIS 354 (Miss. 1946), cert. denied, 331 U.S. 787, 67 S. Ct. 1318, 91 L. Ed. 1817, 1947 U.S. LEXIS 2295 (U.S. 1947), overruled in part, Flowers v. State, 473 So. 2d 164, 1985 Miss. LEXIS 2140 (Miss. 1985).

Duty of appellant to perfect record to show omitted objection, and in the absence of such showing, no complaint will be heard. Bowman v. State, 141 Miss. 115, 106 So. 264, 1925 Miss. LEXIS 218 (Miss. 1925).

In the absence of a sufficient showing in the record of an abuse of advocacy, assignment of error for alleged improper argument of counsel will not be considered. McLeod v. State, 130 Miss. 83, 92 So. 828, 1922 Miss. LEXIS 199 (Miss. 1922).

Supreme Court will not consider statement dehors the record, made by the trial judge as reasons for his order. Gulf Coast Stevedoring Co. v. Gibbs, 124 Miss. 188, 86 So. 582, 1920 Miss. LEXIS 484 (Miss. 1920).

Where record shows the questions but not what the answers of a witness would have been, exclusion of such testimony cannot be reviewed. New Orleans & N. E. R. Co. v. Scarlet, 115 Miss. 285, 76 So. 265, 1917 Miss. LEXIS 210 (Miss. 1917), rev'd, 249 U.S. 528, 39 S. Ct. 369, 63 L. Ed. 752, 1919 U.S. LEXIS 2071 (U.S. 1919).

Court must try case on facts shown by record and not on briefs. Atlantic Horse Ins. Co. v. Nero, 108 Miss. 321, 66 So. 780, 1914 Miss. LEXIS 208 (Miss. 1914).

Where circuit court had no jurisdiction of appeal from justice court because of insufficiency of record, Supreme Court will hear appeal only where record is corrected by certiorari. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

Affidavit not considered to help out record on appeal. Jenkins v. Barber, 85 Miss. 666, 38 So. 36, 1904 Miss. LEXIS 113 (Miss. 1904).

The Supreme Court cannot consider papers which are not a part of the record. Whit v. State, 85 Miss. 208, 37 So. 809, 1904 Miss. LEXIS 151 (Miss. 1904).

The Supreme Court alone in the exercise of its appellate jurisdiction can authoritatively determine what papers constitute the record on appeal, and the clerk of the lower court cannot be enjoined from incorporating certain papers in the transcript on the ground that they are not properly a part of the record. Portwood v. Feld, 72 Miss. 542, 17 So. 373, 1895 Miss. LEXIS 11 (Miss. 1895).

29. Review in general.

Supreme Court reviews de novo record on appeal from grant of motion for summary judgment. J. O. Hooker & Sons v. Roberts Cabinet Co., 683 So. 2d 396, 1996 Miss. LEXIS 596 (Miss. 1996).

Supreme Court will not disturb findings of Chancellor when supported by substantial evidence unless Chancellor abused his discretion, was manifestly wrong, or made finding which was clearly erroneous. Settle v. Galloway, 682 So. 2d 1032, 1996 Miss. LEXIS 573 (Miss. 1996).

Reviewing court does not consider unsupported assignments of error. Touchstone v. Touchstone, 682 So. 2d 374, 1996 Miss. LEXIS 534 (Miss. 1996).

Admission of evidence is within the discretion of the chancellor, who should not be held in error for excluding repetitive and probably irrelevant evidence. Touchstone v. Touchstone, 682 So. 2d 374, 1996 Miss. LEXIS 534 (Miss. 1996).

Court will consider only those matters that actually appear in the record and does not rely on mere assertions in briefs. Touchstone v. Touchstone, 682 So. 2d 374, 1996 Miss. LEXIS 534 (Miss. 1996).

Question of defendant's actual guilt of conspiracy could not be litigated on appeal from denial of postconviction relief after defendant pled guilty to conspiracy. Taylor v. State, 682 So. 2d 359, 1996 Miss. LEXIS 532 (Miss. 1996).

On appeal, Supreme Court and circuit court are limited to findings of Board of Review of Employment Security Commission. Clark Printing Co. v. Mississippi Empl. Sec. Comm'n, 681 So. 2d 1328, 1996 Miss. LEXIS 528 (Miss. 1996).

Supreme Court is ultimate expositor of state's law and conducts de novo review on questions of law. Clark Printing Co. v. Mississippi Empl. Sec. Comm'n, 681 So. 2d 1328, 1996 Miss. LEXIS 528 (Miss. 1996).

Test of reasonableness to be applied by Supreme Court in determining whether provision of covenant for homeowners' association is reasonable is same as that which is to be applied by chancery court, and question of validity of clear and unambiguous covenant at issue is matter of law. Griffin v. Tall Timbers Dev., 681 So. 2d 546, 1996 Miss. LEXIS 516 (Miss. 1996).

Supreme Court would assume that trial court made sufficient findings to support summary determination that plaintiffs were not entitled to attorney fees based on defendants' unsuccessful motion to compel withdrawal of plaintiffs' counsel, where parties did not designate transcripts of hearings on appeal. Willard v. Paracelsus Health Care Corp., 681 So. 2d 539, 1996 Miss. LEXIS 496 (Miss. 1996).

Supreme Court would assume that trial courts made sufficient findings to support summary denials of plaintiffs' requests for attorney fees after bringing successful motions to compel discovery, where transcripts of hearings were not designated on appeal. Willard v. Paracelsus Health Care Corp., 681 So. 2d 539, 1996 Miss. LEXIS 496 (Miss. 1996).

Supreme Court requires appellate counsel to not only make condensed statement of the case but to also support propositions of law with reasons and authorities. Hoops v. State, 681 So. 2d 521, 1996 Miss. LEXIS 433 (Miss. 1996).

Defendant's claim that youthful offender statute was unconstitutional was procedurally barred, since defendant did not cite any authority for his proposition or give any reasons as to why his position was correct reflection of the law. Hoops v. State, 681 So. 2d 521, 1996 Miss. LEXIS 433 (Miss. 1996).

Sentencing is within complete discretion of trial court and not subject to appellate review if it is within limits prescribed by statute. Hoops v. State, 681 So. 2d 521, 1996 Miss. LEXIS 433 (Miss. 1996).

Supreme Court is under no duty to consider assignments of error when no authority is cited. Hoops v. State, 681 So. 2d 521, 1996 Miss. LEXIS 433 (Miss. 1996).

Supreme Court will always review chancellor's findings of fact, but Court will not disturb factual findings of chancellor when supported by substantial evidence unless Court can say with reasonable certainty that chancellor abused his discretion, was manifestly wrong, was clearly erroneous, or applied erroneous legal standard. Cummings v. Benderman, 681 So. 2d 97, 1996 Miss. LEXIS 501 (Miss. 1996).

Even if Supreme Court disagrees with lower court on finding of fact and might have arrived at different conclusion, Supreme Court is still bound by chancellor's findings unless manifestly wrong. Cummings v. Benderman, 681 So. 2d 97, 1996 Miss. LEXIS 501 (Miss. 1996).

In reviewing errors of law, Supreme Court proceeds de novo. Cummings v. Benderman, 681 So. 2d 97, 1996 Miss. LEXIS 501 (Miss. 1996).

Supreme Court will not reverse trial judge's denial of motion for new trial unless Court is convinced that verdict is so contrary to weight of evidence that, if it is allowed to stand, it would sanction an unconscionable injustice. Morgan v. State, 681 So. 2d 82, 1996 Miss. LEXIS 429 (Miss. 1996).

Review of jurisdictional matters by Mississippi Supreme Court is on de novo basis, but in reviewing circuit court's findings of fact in support of its jurisdictional holdings, Supreme Court recognizes that circuit judge heard testimony and was in a much better position to judge extent of party's contacts with forum. Cappaert v. Walker, Bordelon, Hamlin, Theriot & Hardy, 680 So. 2d 831, 1996 Miss. LEXIS 497 (Miss. 1996).

State Supreme Court generally gives great deference to jury's findings and will set aside verdict only when it is contrary to weight of evidence and credible testimony. Ducker v. Moore, 680 So. 2d 808, 1996 Miss. LEXIS 499 (Miss. 1996).

On review of whether jury verdict was against weight of evidence, when evidence is conflicting, state Supreme Court defers to jury's determination of credibility of witnesses and weight of their testimony. Ducker v. Moore, 680 So. 2d 808, 1996 Miss. LEXIS 499 (Miss. 1996).

Reviewing court in divorce action will not set aside chancellor's findings of fact on issue of adultery unless they are manifestly wrong. Holden v. Frasher-Holden, 680 So. 2d 795, 1996 Miss. LEXIS 485 (Miss. 1996).

Where the chancellor in a divorce action has failed to make his or her own findings of fact and conclusions of law on issue of adultery, Supreme Court will review the record de novo. Holden v. Frasher-Holden, 680 So. 2d 795, 1996 Miss. LEXIS 485 (Miss. 1996).

Supreme Court will not disturb chancellor's findings when supported by substantial evidence, unless chancellor abused his discretion, was manifestly wrong or clearly erroneous, or erroneous legal standard was applied. United Southern Bank v. Bank of Mantee, 680 So. 2d 220, 1996 Miss. LEXIS 527 (Miss. 1996).

Supreme Court employs de novo standard of review in reviewing lower court's grant of summary judgment; evidentiary matters are viewed in light most favorable to nonmoving party, and if any triable issues of fact exist, lower court's decision to grant summary judgment will be reversed, but otherwise, decision is affirmed. Travis v. Stewart, 680 So. 2d 214, 1996 Miss. LEXIS 530 (Miss. 1996).

Although Supreme Court is not bound by the Commission on Judicial Performance's findings in judicial disciplinary proceeding, Commission's findings are given great deference when based on clear and convincing evidence. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

Standard for reviewing granting or denying of summary judgment is same standard as is employed by trial court. McCullough v. Cook, 679 So. 2d 627, 1996 Miss. LEXIS 434 (Miss. 1996).

Appellate court conducts de novo review of orders granting or denying summary judgment. McCullough v. Cook, 679 So. 2d 627, 1996 Miss. LEXIS 434 (Miss. 1996).

Clearly erroneous standard of review was appropriate in determining whether trial court erred in holding that defendant failed to make prima facie showing of gender discrimination in exercise of peremptory challenges against female jurors. Simon v. State, 679 So. 2d 617 (Miss. 1996).

Summary judgment is reviewed de novo. Mississippi Farm Bureau Cas. Ins. Co. v. Curtis, 678 So. 2d 983, 1996 Miss. LEXIS 409 (Miss. 1996), overruled in part, Meyers v. Am. States Ins. Co., 914 So. 2d 669, 2005 Miss. LEXIS 322 (Miss. 2005).

Standard of review is de novo for questions of law. Mississippi Farm Bureau Cas. Ins. Co. v. Curtis, 678 So. 2d 983, 1996 Miss. LEXIS 409 (Miss. 1996), overruled in part, Meyers v. Am. States Ins. Co., 914 So. 2d 669, 2005 Miss. LEXIS 322 (Miss. 2005).

In considering bar matters, Supreme Court examines evidence de novo and renders such orders as it deems appropriate. The Mississippi Bar v. Carter, 678 So. 2d 981, 1996 Miss. LEXIS 406 (Miss. 1996).

Supreme Court conducts de novo review in bar disciplinary matter, which necessarily includes review of sanctions imposed. Wright v. State, 678 So. 2d 963, 1996 Miss. LEXIS 220 (Miss. 1996).

In reviewing bar disciplinary matter, deference is accorded to findings of complaint tribunal but Supreme Court has nondelegable duty of ultimately satisfying itself as to facts, and reaching such conclusions and making such judgments as it considers appropriate and just. Wright v. State, 678 So. 2d 963, 1996 Miss. LEXIS 220 (Miss. 1996).

In attorney disciplinary proceedings, beyond reasonable doubt standard does not apply, but rather Supreme Court applies clear and convincing evidence standard. Wright v. State, 678 So. 2d 963, 1996 Miss. LEXIS 220 (Miss. 1996).

Alimony award will not be disturbed on appeal unless it is found to be against overwhelming weight of the evidence or manifestly in error. Parsons v. Parsons, 678 So. 2d 701, 1996 Miss. LEXIS 410 (Miss. 1996).

Defendant failed to adequately demonstrate violation of fundamental right regarding his claim of speedy trial violation in connection with delay of more than 18 months between his arrest and his indictment and trial and, thus, reviewing court would not use rule of plain error to hear speedy trial issue, which was not raised in trial court; defendant's discussion of issue on appeal was brief and did not state how delay violated his rights. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

As a rule, Supreme Court only addresses issues on plain error review when error of trial court has impacted upon fundamental right of defendant; it has been established that where fundamental rights are violated, procedural rules give way to prevent miscarriage of justice. Sanders v. State, 678 So. 2d 663, 1996 Miss. LEXIS 300 (Miss. 1996).

Chancellor's finding of fact will not be overturned on appeal unless manifestly erroneous. Shepard v. Jones by & Through Jones (In re Estate of Stowers), 678 So. 2d 660, 1996 Miss. LEXIS 329 (Miss. 1996).

For speedy trial purposes, finding of good cause for delay is finding of ultimate fact, and should be treated on appeal as any other finding of fact; it will be left undisturbed where there is in record substantial credible evidence from which it could have been made. Walton v. State, 678 So. 2d 645, 1996 Miss. LEXIS 192 (Miss. 1996).

If trial judge applied erroneous standard in ruling on motion to dismiss on speedy trial grounds, Supreme Court will not affirm trial court's finding of fact. Walton v. State, 678 So. 2d 645, 1996 Miss. LEXIS 192 (Miss. 1996).

Supreme Court reviews conclusions of law de novo. Ramsey v. Copiah Bank, N.A., 678 So. 2d 637, 1996 Miss. LEXIS 208 (Miss. 1996).

Questions of law are subject to de novo appellate review. Bank of Mississippi v. Southern Mem. Park, 677 So. 2d 186, 1996 Miss. LEXIS 315 (Miss. 1996).

Chancellor's ruling on findings of fact will not be disturbed on appeal unless manifestly wrong or clearly erroneous. Bank of Mississippi v. Southern Mem. Park, 677 So. 2d 186, 1996 Miss. LEXIS 315 (Miss. 1996).

Denial of requested attorney fees, incurred by perpetual trust trustee while new cemetery owner attempted to substitute trustee, resolved question of law that was subject to de novo review on appeal. Bank of Mississippi v. Southern Mem. Park, 677 So. 2d 186, 1996 Miss. LEXIS 315 (Miss. 1996).

When reviewing a jury verdict of guilty, Supreme Court is required to accept as true all evidence favorable to state, together with reasonable inferences arising therefrom, and to disregard evidence favorable to defendant; if such will support a verdict of guilty beyond a reasonable doubt and to exclusion of every reasonable hypothesis consistent with innocence, jury verdict shall not be disturbed. Rhodes v. State, 676 So. 2d 275, 1996 Miss. LEXIS 318 (Miss. 1996).

Supreme Court conducts de novo review on questions of law, including whether joint tenancy can be severed by will and whether conservator violated fiduciary duties. Herrington v. Bodman (In re Estate of Bodman), 674 So. 2d 1245, 1996 Miss. LEXIS 190 (Miss. 1996).

Supreme Court's review of whether confession was voluntary is limited, and circuit court sits as fact finder when determining voluntariness of confession and its determination will not be reversed unless manifestly wrong. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Where counsel failed to proffer contemplated questions and answers from witnesses concerning defendant's future behavior, Supreme Court cannot assume what the witness would have testified to. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

When reviewing denial of motion for judgment notwithstanding the verdict (JNOV), jury's decision is afforded great deference because of jury's position to evaluate and weigh evidence and truthfulness of witnesses' testimony. Luther McGill, Inc. v. Bradley, 674 So. 2d 11, 1996 Miss. LEXIS 210 (Miss. 1996).

Supreme Court reviewing denial of post-conviction relief in capital murder case lacked authority under state law to reweigh aggravating and mitigating circumstances in order to uphold death sentence after finding that improperly defined aggravating circumstance had been submitted to jury, and also lacked authority to engage in harmless error analysis, where case was tried and affirmed on direct appeal before passage of statute granting such authority. Cole v. State, 666 So. 2d 767, 1995 Miss. LEXIS 595 (Miss. 1995).

Supreme Court will not disturb findings of chancellor in action for title to real property unless chancellor is manifestly wrong, clearly erroneous or applied erroneous legal standard. Dew v. Langford, 666 So. 2d 739, 1995 Miss. LEXIS 594 (Miss. 1995).

Supreme Court is without authority to disturb conclusions of chancellor in suit claiming title to real property when substantial evidence supports findings, even though Supreme Court may have found otherwise as an original matter. Dew v. Langford, 666 So. 2d 739, 1995 Miss. LEXIS 594 (Miss. 1995).

Supreme Court will not reverse final order of Mississippi State Department of Health unless agency's decision was arbitrary or capricious. Cain v. Mississippi State Dep't of Health, 666 So. 2d 506, 1995 Miss. LEXIS 621 (Miss. 1995).

That Supreme Court will not reverse chancellor's finding where it is supported by substantial credible evidence holds true for contempt matters. Varner v. Varner, 666 So. 2d 493, 1995 Miss. LEXIS 599 (Miss. 1995).

Determination of punishment for contempt falls within discretion of chancellor, and Supreme Court will not reverse on appeal absent manifest error or application of erroneous legal standard. Varner v. Varner, 666 So. 2d 493, 1995 Miss. LEXIS 599 (Miss. 1995).

Supreme Court proceeds de novo in determining claimed errors of law. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

Issues of whether notice of nonrenewal of principal's employment was timely and whether superintendent of school district had authority to issue a letter of nonrenewal to principal were questions of law to which de novo standard of review applied on appeal. Ford v. Holly Springs Sch. Dist., 665 So. 2d 840, 1995 Miss. LEXIS 452 (Miss. 1995).

In reviewing a school district's decision not to renew an employee's contract, the Supreme Court's inquiry concerns whether the nonrenewal decision was (1) made for a reason not specifically prohibited by law, (2) made in accordance with the applicable procedural requirements, (3) supported by substantial evidence, and (4) arbitrary or capricious. Harris v. Canton Separate Pub. Sch. Bd. of Educ., 655 So. 2d 898, 1995 Miss. LEXIS 269 (Miss. 1995).

When a defendant raises the issue of severance, a trial court should hold a hearing on the issue. The State has the burden of making a prima facie case showing that the offenses charged fall within the language of the statute allowing multi-count indictments. If the State meets its burden, the defendant may rebut by showing that the offenses were separate and distinct acts or transactions. In making its determination regarding severance, the trial court should pay particular attention to whether the time period between the occurrences is insignificant, whether the evidence proving each count would be admissible to prove each of the other counts, and whether the crimes are interwoven. If a trial court follows this procedure, the Supreme Court will review the trial court's decision under the abuse of discretion standard giving due deference to the trial court's findings. On review, the Supreme Court will defer to the trial court's findings even if the jury later acquits the defendant on one or more counts or if the Supreme Court concludes on appeal that a directed verdict, j.n.o.v. or new trial should have been granted on one or more counts. Corley v. State, 584 So. 2d 769, 1991 Miss. LEXIS 480 (Miss. 1991).

The Supreme Court will vacate or modify the Board of Bar Admissions' bar examination grading decision only where it is found to be "arbitrary, capricious or malicious." Mississippi Bd. of Bar Admissions v. Applicant F, 582 So. 2d 377, 1991 Miss. LEXIS 181 (Miss.), cert. denied, 502 U.S. 984, 112 S. Ct. 591, 116 L. Ed. 2d 616, 1991 U.S. LEXIS 6863 (U.S. 1991).

The Supreme Court has the independent authority to reassess the punishment meted out by the Complaint Tribunal and to increase or decrease the punishment as it deems proper; there is no standard as to what punishment for particular misconduct ought to be, and cases are considered on a case by case basis. Mississippi State Bar v. Attorney D., 579 So. 2d 559, 1991 Miss. LEXIS 252 (Miss. 1991).

The Supreme Court conducts a de novo review in a bar disciplinary matter which necessarily includes a review of the sanctions imposed. Deference is accorded the findings of the complaint tribunal but the Supreme Court "has the non-delegable duty of ultimately satisfying itself as to the facts, and reaching such conclusions and making such judgments as it considers appropriate and just." Mississippi State Bar v. Smith, 577 So. 2d 1249, 1991 Miss. LEXIS 185 (Miss. 1991).

In the youth court, as elsewhere, requests for continuance are addressed to the sound discretion of the court, except that in youth court more so than almost any other there is an imperative that the Court proceed with the matter as promptly as may fairly be done. The Supreme Court will not reverse the youth court in exercising its discretion in these cases unless the youth court abused its discretion and the Supreme Court is convinced that injustice would result therefrom. In Interest of T.L.C., 566 So. 2d 691, 1990 Miss. LEXIS 431 (Miss. 1990), overruled in part, D.T. v. Hinds Cnty. Youth Court (In re J.T.), 188 So. 3d 1192, 2016 Miss. LEXIS 165 (Miss. 2016).

The Supreme Court acts as the factfinder in judicial misconduct proceedings, giving great deference to the findings, based on clear and convincing evidence, and the recommendations of the Mississippi Judicial Performance Commission. However, the Supreme Court is not bound by the recommendations of the Commission and may impose additional sanctions. Mississippi Judicial Performance Com. v. Walker, 565 So. 2d 1117, 1990 Miss. LEXIS 291 (Miss. 1990).

The review of the decisions of the Workers' Compensation Commission is like the review of any other administrative body which sits as a trier of fact. If the decision of the Commission is based upon substantial evidence and there is no error of law, the decision will be affirmed on appeal. Thus, if there is a quantum of credible evidence which supports the decision of the Commission, no court will reverse the decision. The Supreme Court will not determine where the preponderance of the evidence lies when the evidence is conflicting, the assumption being that the Commission, as the trier of facts, has previously determined which evidence is credible and which is not. This is not to say that the reviewing court will merely "rubber stamp" the Commission's actions; where no evidence or only a scintilla of evidence supports a Workers' Compensation Commission decision, the Supreme Court would not hesitate to reverse. Metal Trims Industries, Inc. v. Stovall, 562 So. 2d 1293, 1990 Miss. LEXIS 277 (Miss. 1990).

There are practical and institutional limitations upon the Supreme Court's ability to find facts; consequently, much deference is placed upon the trial judge's full discharge of his or her responsibility to make findings of fact as to the question of whether Miranda rights have been intelligently, knowing and voluntarily waived. However, when the trial judge fails to make specific findings and only makes general findings thereby allowing admissibility of evidence, the Supreme Court's scope of review is considerably broader particularly when the trial judge's findings on the precise points at issue on appeal are not clearly inferable from the findings made. McCarty v. State, 554 So. 2d 909, 1989 Miss. LEXIS 499 (Miss. 1989).

The scope of appellate review under § 11-7-213[Repealed] is limited to determining whether the trial court abused its discretion in granting a motion for new trial where the plaintiff refuses to accept an additur. State Highway Com. v. Warren, 530 So. 2d 704, 1988 Miss. LEXIS 422 (Miss. 1988).

Statement by trial judge that accused waived requirement of Code 1942 § 2505, that copy of indictment be delivered to him must be given great weight by supreme court on appeal of defendant from judgment of conviction. Simmons v. State, 208 Miss. 586, 45 So. 2d 149, 1950 Miss. LEXIS 276 (Miss. 1950).

On appeal, Supreme Court is limited to facts which are of record, and reasonable inference therefrom. American Life Ins. Co. v. Walker, 208 Miss. 1, 43 So. 2d 657, 1949 Miss. LEXIS 401 (Miss. 1949).

Function of Supreme Court as appellate court is to examine record of trial and determine whether any error of law was committed by trial court, and, in that connection, whether facts in evidence are sufficient to sustain jury's verdict. Dickins v. State, 208 Miss. 69, 43 So. 2d 366, 1949 Miss. LEXIS 409 (Miss. 1949).

Supreme Court is limited on review to case as presented to jury in trial court and is not permitted to conjecture as to what result might or could have been had recovery been sought on some other ground. Picard v. Waggoner, 204 Miss. 366, 37 So. 2d 567, 1948 Miss. LEXIS 375 (Miss. 1948).

Determination must be made solely on the record of the court below. Hemphill v. Smith, 128 Miss. 586, 91 So. 337, 1922 Miss. LEXIS 141 (Miss. 1922).

A question, not raised either by assignment of error or mentioned in brief of the appellant, need not be considered on appeal. McCaleb v. McCaleb, 110 Miss. 486, 70 So. 563, 1915 Miss. LEXIS 62 (Miss. 1915), modified, 113 Miss. 337, 74 So. 275, 1917 Miss. LEXIS 106 (Miss. 1917).

Supreme Court may ignore theory on which case tried in lower court. Yazoo & M. V. R. Co. v. Hawkins, 104 Miss. 55, 61 So. 161, 1913 Miss. LEXIS 8 (Miss. 1913).

Where case submitted on agreed statement of facts, Supreme Court can look only to facts set out in such statement. Grant v. Independent Order of Sons & Daughters of Jacob, 97 Miss. 182, 52 So. 698, 1910 Miss. LEXIS 266 (Miss. 1910).

Issues on appeal must be same as those made in trial court. Vicksburg Mfg. & Supply Co. v. J. H. Jaffray Constr. Co., 94 Miss. 282, 49 So. 116, 1908 Miss. LEXIS 57 (Miss. 1908).

Question not directly involved and unnecessary to decision need not be considered. Adams v. Samuel R. Bullock & Co., 94 Miss. 27, 47 So. 527, 1908 Miss. LEXIS 15 (Miss. 1908).

30. —Abuse of discretion.

Appellate court applies abuse of discretion standard of review when determining whether trial court erred in refusing additur or new trial. Lewis v. Hiatt, 683 So. 2d 937, 1996 Miss. LEXIS 632 (Miss. 1996).

Admissibility of photographs rests within sound discretion of trial court which will be upheld unless there has been abuse of discretion. Brown v. State, 682 So. 2d 340, 1996 Miss. LEXIS 427 (Miss. 1996), cert. denied, 520 U.S. 1127, 117 S. Ct. 1271, 137 L. Ed. 2d 348, 1997 U.S. LEXIS 1821 (U.S. 1997).

Standard of review for trial court's decision on whether to award attorney fees to party who successfully brings motion to compel discovery is abuse of discretion standard. Willard v. Paracelsus Health Care Corp., 681 So. 2d 539, 1996 Miss. LEXIS 496 (Miss. 1996).

Supreme Court would not reach issues of school board's statutory power to create alcohol policy for its students and set punishments for violation of such policy and whether student suspended in adherence to such policy received procedural due process, where such issues were not raised in proceedings below with respect to student's suspension; review procedure was not available for purpose of settling abstract or academic questions, and Supreme Court had no power to issue advisory opinions. Board of Trustees v. T.H. by & Through T.H. (In the Interest of T.H.), 681 So. 2d 110, 1996 Miss. LEXIS 492 (Miss. 1996).

When defendant alleges that he cannot obtain impartial jury without change of venue, lower court's decision to deny such motion is within trial judge's sound discretion; decision of lower court will not be overturned if that discretion has not been abused. Morgan v. State, 681 So. 2d 82, 1996 Miss. LEXIS 429 (Miss. 1996).

Standard of review when trial court institutes sanctions for discovery abuses is whether trial court abused its discretion in its decision; Supreme Court will affirm unless there is definite and firm conviction that trial court committed clear error of judgment in conclusion it reached upon weighing of relevant factors. Kinard v. Morgan, 679 So. 2d 623, 1996 Miss. LEXIS 422 (Miss. 1996).

Standard of review for award of attorneys' fees is abuse of discretion, and such awards must be supported by credible evidence. Regency Nissan v. Jenkins, 678 So. 2d 95, 1996 Miss. LEXIS 435 (Miss. 1996).

Chancellor's ruling on findings of fact will not be disturbed on appeal unless manifestly wrong or clearly erroneous. Bank of Mississippi v. Southern Mem. Park, 677 So. 2d 186, 1996 Miss. LEXIS 315 (Miss. 1996).

Supreme Court will reverse trial judge's denial of request for new trial only when such denial amounts to abuse of that judge's discretion. Shields v. Easterling, 676 So. 2d 293, 1996 Miss. LEXIS 307 (Miss. 1996).

Supreme Court will not disturb trial court's ruling on matters pertaining to redirect unless there has been clear abuse of discretion. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Abuse of discretion standard applies to Supreme Court's review of a trial judge's denial of a motion for additur. McBride v. Chevron U.S.A., 673 So. 2d 372, 1996 Miss. LEXIS 132 (Miss. 1996), modified, 1996 Miss. LEXIS 271 (Miss. May 23, 1996).

Abuse of discretion standard applies to Supreme Court's review of trial judge's decision not to allow rebuttal testimony. McBride v. Chevron U.S.A., 673 So. 2d 372, 1996 Miss. LEXIS 132 (Miss. 1996), modified, 1996 Miss. LEXIS 271 (Miss. May 23, 1996).

If trial court follows proper procedure in determining whether multi-count indictment warrants severance, Supreme Court will give deference to trial court's findings on review, employing abuse of discretion standard. Hughes v. State, 665 So. 2d 852, 1995 Miss. LEXIS 564 (Miss. 1995).

No reversal for refusal of continuance unless abuse of sound discretion is clear. Continental Ins. Co. v. Brown, 142 Miss. 199, 106 So. 633, 1926 Miss. LEXIS 48 (Miss. 1926).

Conviction not reversed on appeal for refusal of change of venue except on clear showing of abuse of trial court's discretion. Dalton v. State, 141 Miss. 841, 105 So. 784, 1925 Miss. LEXIS 199 (Miss. 1925).

31. —Federal questions.

Law of case rule is inapplicable on second appeal where question involved arises under Constitution and laws of the United States. Louisville & N. R. Co. v. State, 107 Miss. 597, 65 So. 881, 1914 Miss. LEXIS 130 (Miss. 1914).

Federal Supreme Court decisions on the Constitution of the United States are binding on state courts. State v. Louisville & N.R.R., 97 Miss. 35, 51 So. 918 (1910).

The Supreme Court will consider authoritative decisions of the Supreme Court of the United States on Federal question. Overton v. State, 70 Miss. 558, 13 So. 226 (Miss. 1893).

32. —Presumptions.

Judgment of circuit court as to qualification of juror is prima facie correct. Donahue v. State, 142 Miss. 20, 107 So. 15, 1926 Miss. LEXIS 55 (Miss. 1926).

No presumption of verdict for certain defendant being influenced by erroneous peremptory instruction for other defendant. Gilliam v. McLemore, 141 Miss. 253, 106 So. 99, 1925 Miss. LEXIS 213 (Miss. 1925).

Where stenographer's notes of evidence not set up or stricken, presumption is that evidence supported chancellor's decree. Berry v. Dampier, 131 Miss. 893, 95 So. 744, 1923 Miss. LEXIS 224 (Miss. 1923).

33. —Comments or argument of counsel.

Prosecutor's closing argument that defendant's accomplices were not being tried because they had been exonerated in prior judicial hearing was proper response to defense counsel's references to the fact that no action was being taken against defendant's accomplices. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecutor's closing argument during guilt phase that "This man deserves everything that he can get for the most brutal murder" and "He's guilty" were not personal opinion comments, as prosecutor never said that she believed that defendant was guilty or that she believed that defendant deserved the death penalty. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecutors are afforded the right to argue anything in the State's closing argument that was presented as evidence, but arguing statements of fact which are not in evidence or necessarily inferable from it and which are prejudicial to the defendant is error. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecuting attorney should refrain from commenting upon appearance of defendant when he has not been introduced as a witness. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Prosecuting attorney should refrain from doing anything or saying anything that would tend to cause jury to disfavor defendant due to matters other than evidence relative to the crime. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

A prosecutor's biblical references during closing argument at the sentencing phase of a capital murder prosecution did not deprive the defendant of a fair trial, as the comments were within the "broad latitude" afforded counsel in closing argument. Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

A trial court abused its discretion when it sustained the State's objection to the defense counsel's use during closing argument of a homemade chart as a visual aid to demonstrate to the jury the various standards of proof and belief which fell short of the "beyond a reasonable doubt" standard; while distinctions between reasonable doubt, all possible doubt, beyond a shadow of a doubt, and the like, are not properly the subject of jury instructions, they are permissible during a trial counsel's closing argument. However, the trial court's error was harmless beyond a reasonable doubt since there was nothing depicted on the chart that could not have been generously explored and explained via the spoken word. Heidelberg v. State, 584 So. 2d 393, 1991 Miss. LEXIS 437 (Miss. 1991).

Where an objection to a comment made during closing argument is sustained, and no request is made that the jury be instructed to disregard the comment, there is no error unless a fundamental right is clearly involved. Brock v. State, 530 So. 2d 146, 1988 Miss. LEXIS 361 (Miss. 1988).

The failure to obtain rulings from the trial court on objections to alleged improper argument of counsel waived the objections. Cole v. State, 525 So. 2d 365, 1987 Miss. LEXIS 2655 (Miss. 1987), cert. denied, 488 U.S. 934, 109 S. Ct. 330, 102 L. Ed. 2d 348, 1988 U.S. LEXIS 4775 (U.S. 1988).

34. —Comments on failure of defendant to testify.

Prosecutor's comment on defendant's demeanor and appearance may have highlighted his failure to testify, which is plainly prohibited, and the remark should not have been made. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

Any error in prosecutor's comment on defendant's demeanor, which might have been taken as a comment on failure to testify, was cured by instructions to jurors to disregard remarks of counsel which have no basis in the evidence and to not draw any unfavorable inference against defendant because of his failure to testify. Blue v. State, 674 So. 2d 1184, 1996 Miss. LEXIS 304 (Miss.), cert. denied, 519 U.S. 1030, 117 S. Ct. 588, 136 L. Ed. 2d 517, 1996 U.S. LEXIS 7523 (U.S. 1996).

A prosecutor's remarks during the penalty phase of a capital murder prosecution did not constitute an improper comment on the defendant's failure to testify where the prosecutor stated that the defendant "showed no compassion, but would send a lawyer up here and ask you for compassion," since the argument pointed out the lack of a mitigation defense presented by the defendant, and that he was reduced to sending his lawyer in to plead for his life after all else had failed. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss.

1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

The prosecutor's closing argument in the guilt phase of a capital murder prosecution did not constitute an improper comment on the defendant's right to remain silent following arrest where the prosecutor, while discussing a county jail inmate's testimony as to statements made by the defendant while he was in the jail, referred to the relationship between the defendant and the witness, and described the circumstances under which the statements were made. Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

A prosecutor's closing argument in a capital murder case did not constitute a comment on the defendant's failure to testify at trial, in spite of the defendant's argument that the prosecutor's comments highlighted the fact that the only people alive who could have testified as to the events surrounding the murders were the defendant and his accomplice, where the prosecutor merely stated that the defendant and his accomplice saw to it that there were no eyewitnesses, and that "people who kill their victims and kill their eyewitnesses cannot be set free." Carr v. State, 655 So. 2d 824, 1995 Miss. LEXIS 56 (Miss. 1995), cert. denied, 516 U.S. 1077, 116 S. Ct. 783, 133 L. Ed. 2d 734, 1996 U.S. LEXIS 547 (U.S. 1996).

In the sentencing phase of a capital murder prosecution, the State's closing argument did not constitute a comment on the defendant's failure to take the witness stand in his own defense where the State made the following argument: "Do you think she was suffering? Do you think that's cruel and atrocious, and what's even more than that, what do you think was running through [defendant's] head as he sat through watching her gag on her own blood? What do you think he was thinking?" Thorson v. State, 653 So. 2d 876, 1994 Miss. LEXIS 600 (Miss. 1994).

A prosecutor did not improperly comment during closing argument on the defendant's right to remain silent where the prosecutor remarked that the victim could not talk because she was dead and stated that only the defendant and God knew what happened, but he did not observe the defendant's silence during trial; the prosecutor's comments would be a reference to the defendant's failure to testify only if innuendo and insinuation were employed. Alexander v. State, 610 So. 2d 320, 1992 Miss. LEXIS 580 (Miss. 1992).

A prosecutor improperly commented during closing argument on a capital murder defendant's failure to testify where the prosecutor stated that the defendant "hasn't told you the whole truth yet," that "you still don't know the whole story," and that the defendant was the only person alive who could give the whole story. Butler v. State, 608 So. 2d 314, 1992 Miss. LEXIS 588 (Miss. 1992).

A prosecutor did not improperly comment on the defendant's failure to testify when he stated during closing argument: "That's what you have got before you, and that's all you have got before you. All the evidence in this case points to one thing and one thing only"; the prosecutor's comment related to the evidence presented in the trial by both the State and defense as a whole, rather than the failure of the defendant to take the stand. Rogers v. State, 599 So. 2d 930, 1992 Miss. LEXIS 123 (Miss.), overruled in part, Mayfield v. State, 612 So. 2d 1120, 1992 Miss. LEXIS 861 (Miss. 1992).

In a capital murder prosecution, the prosecutor's statement that there had not been any testimony that the defendant acted in self-defense did not constitute an impermissible comment upon the failure of the defendant to testify, where the prosecutor's statement was made in connection with his argument that the State had proved the required element that the defendant's actions were not done in necessary self-defense. Ladner v. State, 584 So. 2d 743, 1991 Miss. LEXIS 434 (Miss.), cert. denied, 502 U.S. 1015, 112 S. Ct. 663, 116 L. Ed. 2d 754, 1991 U.S. LEXIS 7261 (U.S. 1991).

A prosecutor's statement in closing argument that "they" hadn't bothered to tell the jury what the defendant was doing at a certain location was not an impermissible comment on the defendant's failure to testify since it was proper for the prosecutor to question the defense's inability to successfully explain the defendant's presence in the area where the crime took place, and the prosecutor's use of the word "they" appeared to be a reference to the defendant's 2 attorneys rather than the defendant himself. Jimpson v. State, 532 So. 2d 985, 1988 Miss. LEXIS 428 (Miss. 1988).

An assignment of error based on the prosecutor's comment on the defendant's failure to testify was not procedurally barred for failure to make a contemporaneous objection because the right not to take the witness stand is a fundamental constitutional right. Livingston v. State, 525 So. 2d 1300, 1988 Miss. LEXIS 223 (Miss. 1988).

35. —Comments on failure of defendant to present evidence.

A prosecutor's comments on the defendant's failure to testify reached a constitutional dimension so egregious that failure on the part of the defense counsel to make a proper objection either at trial or in his motion for a new trial did not waive the error where the prosecutor made 4 separate statements telling the jury that the State's witness' testimony was "unopposed," "unimpeached," "unrebutted," and that there was "no evidence whatsoever toward their unreliability." Whigham v. State, 611 So. 2d 988, 1992 Miss. LEXIS 821 (Miss. 1992).

It was improper for a prosecutor to comment on a burglary defendant's failure to call a witness who was allegedly with the defendant at the time the crime was committed, where there was no suggestion that the witness was not equally available to the State, the witness was not identified as a person under the control of the defendant, and he was not a close relative who would ordinarily be expected to be put in an unacceptable compromising position should he be called to testify as to the validity of the defendant's alibi. Burke v. State, 576 So. 2d 1239, 1991 Miss. LEXIS 54 (Miss. 1991).

A prosecutor's comment in closing argument regarding the defense's failure to call the defendant's "good friend" to testify was reversible error since the failure of either party to examine a witness equally accessible to both parties is not a proper subject for comment before a jury. Holmes v. State, 537 So. 2d 882, 1988 Miss. LEXIS 628 (Miss. 1988).

A prosecutor's comment during closing argument regarding the defendant's failure to call witnesses on his own behalf was harmless error where there was substantial evidence of the defendant's guilt and the trial judge sustained the objection to the improper statement although he did not admonish the jury when requested to do so. Brock v. State, 530 So. 2d 146, 1988 Miss. LEXIS 361 (Miss. 1988).

36. —Comments on evidence presented.

A prosecutor's comments during closing argument, referring to the defendant as a liar, where not improper where the defendant had admitted on the witness stand that he had lied on more than one occasion about key facts, and the prosecutor's comments were in response to evidence and testimony presented in the case. Shell v. State, 554 So. 2d 887, 1989 Miss. LEXIS 492 (Miss. 1989), rev'd, in part, 498 U.S. 1, 111 S. Ct. 313, 112 L. Ed. 2d 1, 1990 U.S. LEXIS 5501 (U.S. 1990).

In a prosecution for aggravated assault and shooting into a dwelling house, comments made by the district attorney to the effect that no one knew whether the defendant contended that he was not guilty because he didn't shoot the gun into the house or because he did shoot the gun into the house but could not appreciate the wrongfulness of that act, were comments on the defense presented, or lack thereof, rather than comments on the defendant's failure to testify and, therefore, were not improper. Shook v. State, 552 So. 2d 841, 1989 Miss. LEXIS 449 (Miss. 1989).

Record does not properly preserve for review point that district attorney in prosecution for unlawful possession of intoxicating liquor accused defendant of perjury during course of argument of case, when record shows that no objection was made at time of argument and question was not raised until after argument was concluded and jury retired. Outlaw v. State, 208 Miss. 13, 43 So. 2d 661, 1949 Miss. LEXIS 402 (Miss. 1949).

37. —Comments to jurors relating to rendition of verdict.

The prohibition against "golden rule" arguments, which ask the jurors to put themselves in the place of one of the parties, extends to criminal cases. Chisolm v. State, 529 So. 2d 635, 1988 Miss. LEXIS 348 (Miss. 1988).

A prosecutor's remark during closing argument, to the effect that finding the defendant guilty would make the statement that law and order exists for everyone in the county, was improper. Jurors are representatives of the community in one sense, but they are not to vote in a representative capacity. Each juror is to apply the law to the evidence and vote accordingly. The issue which each juror must resolve is not whether he or she wishes to "send a message" but whether he or she believes that the evidence showed the defendant to be guilty of the crime charged. Williams v. State, 522 So. 2d 201, 1988 Miss. LEXIS 125 (Miss. 1988).

38. —Comments relating to sentencing.

In the penalty phase of a capital murder prosecution, the prosecutor's comment that "we have never heard one single witness say he ever felt sorry for what he did" was not impermissible, as it was simply an argument that none of the defendant's mitigation witnesses indicated that the defendant was sorry for killing the victim, and was not an argument for "lack of remorse" as an aggravating factor. Davis v. State, 660 So. 2d 1228, 1995 Miss. LEXIS 287 (Miss. 1995), cert. denied, 517 U.S. 1192, 116 S. Ct. 1684, 134 L. Ed. 2d 785, 1996 U.S. LEXIS 3101 (U.S. 1996).

A prosecutor's comments in closing argument during the sentencing phase of a capital case suggesting that prisoners and guards might be in danger if the defendant were to receive a life sentence rather than the death penalty were not improper. Woodward v. State, 533 So. 2d 418, 1988 Miss. LEXIS 492 (Miss. 1988), cert. denied, 490 U.S. 1028, 109 S. Ct. 1767, 104 L. Ed. 2d 202, 1989 U.S. LEXIS 2004 (U.S. 1989).

A prosecutor's comments during closing argument which referred to the potential sentences for murder and manslaughter were improper. The question of punishment is categorically unrelated to whether the verdict should be murder or manslaughter. Marks v. State, 532 So. 2d 976, 1988 Miss. LEXIS 425 (Miss. 1988).

A prosecutor's argument in the sentencing phase of a capital case regarding the possibility of the defendant being paroled and the fact that another murder defendant had committed murder after being paroled from a life sentence constituted reversible error. The argument regarding parole introduced an arbitrary factor into the sentencing process proscribed by § 99-19-105(3)(a). Williams v. State, 544 So. 2d 782, 1987 Miss. LEXIS 2843 (Miss. 1987).

39. —Miscellaneous Comments.

Comments made by a prosecutor during his closing argument in a capital murder prosecution did not constitute prosecutorial misconduct, where the prosecutor stated that the victim was a human being and had a right to be protected by the law even though he may not have been wealthy or prominent or a leader in his community, in spite of the defendant's argument that the "value" of the victim's life should not be a factor in considering whether the defendant should live or die and that such a consideration introduces an arbitrary factor into the process, since the prosecutor's statement was innocuous. Mackbee v. State, 575 So. 2d 16, 1990 Miss. LEXIS 831 (Miss. 1990).

A prosecutor's references to the Bible during his closing argument were not improper. Shell v. State, 554 So. 2d 887, 1989 Miss. LEXIS 492 (Miss. 1989), rev'd, in part, 498 U.S. 1, 111 S. Ct. 313, 112 L. Ed. 2d 1, 1990 U.S. LEXIS 5501 (U.S. 1990).

In a murder prosecution, the prosecutor's comment during closing argument that the defendant was "clothed in the full protection of the Constitution of the United States and he has got what [the victim] never got. And that is a jury of 12 good people to decide his fate," did not warrant reversal of the jury's verdict where the comment was an isolated statement and no other portion of the closing argument focused on the exercise of constitutional rights by the defendant. Shell

v. State, 554 So. 2d 887, 1989 Miss. LEXIS 492 (Miss. 1989), rev'd, in part, 498 U.S. 1, 111 S. Ct. 313, 112 L. Ed. 2d 1, 1990 U.S. LEXIS 5501 (U.S. 1990).

A prosecutor's remarks during closing argument referring to an expert as a "whore," stating that the expert was paid $2,000, and that the expert resided outside the state should not have been made but did not constitute reversible error. Dunaway v. State, 551 So. 2d 162, 1989 Miss. LEXIS 371 (Miss. 1989).

In an eminent domain proceeding arising from the condemnation of land for the purpose of widening a highway, the highway department counsel's repeated statements in closing argument that the jurors were citizens and taxpayers and the highway department was working for them were for the purpose of inflaming the minds of the jurors and constituted reversible error. Dykes v. State Highway Com., 535 So. 2d 1349, 1988 Miss. LEXIS 572 (Miss. 1988).

A prosecutor's comments during cross-examination of the defendant pertaining to the fact that the defendant had been released from jail after the preliminary hearing because bond had been posted did not constitute error where the remarks were made in response to the defendant's implication that his release from jail was due to the State's inability to present evidence sufficient to retain him in custody. Dixon v. State, 519 So. 2d 1226, 1988 Miss. LEXIS 152 (Miss. 1988).

Permitting district attorney in closing argument to refer to defendant in murder prosecution as a "black gorilla," is reversible error. Harris v. State, 209 Miss. 141, 46 So. 2d 91, 1950 Miss. LEXIS 372 (Miss. 1950).

Court's refusal to prevent improper argument together with refusal of proper charge as to such argument held prejudicial to defendant and constituted reversible error. Illinois C. R. Co. v. Weinstein, 99 Miss. 515, 55 So. 48, 1911 Miss. LEXIS 220 (Miss. 1911).

40. —Instructions.

Supreme Court does not review jury instructions in isolation. Hoops v. State, 681 So. 2d 521, 1996 Miss. LEXIS 433 (Miss. 1996).

On review of jury instructions, state Supreme Court does not review instructions in isolation, but rather, reads instructions as whole to determine if jury was properly instructed; accordingly, defects in specific instructions do not require reversal where all instructions taken as whole fairly, although not perfectly, announce applicable primary rules of law, however, if those instructions do not fairly or adequately instruct jury, state Supreme Court can and will reverse. Boone v. Wal-Mart Stores, 680 So. 2d 844, 1996 Miss. LEXIS 500 (Miss. 1996).

On appeal, Supreme Court does not review jury instructions in isolation; rather, they are read as whole to determine if jury was properly instructed. Shields v. Easterling, 676 So. 2d 293, 1996 Miss. LEXIS 307 (Miss. 1996).

In reviewing trial judge's denial of request for peremptory instructions that direct a verdict, Supreme Court will consider evidence in light most favorable to appellee, giving that party the benefit of all favorable inferences that may be reasonably drawn from evidence, and if facts so considered point so overwhelmingly in favor of appellant that reasonable men could not have arrived at contrary verdict, Supreme Court is required to reverse and render; if there is substantial evidence in support of the verdict, however, affirmance is required. McBride v. Chevron U.S.A., 673 So. 2d 372, 1996 Miss. LEXIS 132 (Miss. 1996), modified, 1996 Miss. LEXIS 271 (Miss. May 23, 1996).

Supreme Court will reverse judgment on appeal because of errors of court below in erroneously granting some, and refusing other, instructions which result in denial of fair trial to appellant because jury is not properly instructed on law of case. Wilburn v. Gordon, 209 Miss. 27, 45 So. 2d 844, 1950 Miss. LEXIS 359 (Miss. 1950).

Error of court in overruling defendant's motion to exclude state's evidence and for instruction requiring jury to return verdict of not guilty made at conclusion of state's evidence in trial of charge of unlawful possession of intoxicating liquor is waived by defendant who proceeds to introduce evidence in his own behalf. Faust v. State, 43 So. 2d 379 (Miss. 1949).

Supreme Court must find verdict improper before reversing case on ground that inaccuracy in instruction may have misled jury in reaching improper verdict. Neely v. Charleston, 204 Miss. 360, 37 So. 2d 495, 1948 Miss. LEXIS 374 (Miss. 1948).

Supreme Court will not reverse a case because the instruction is not happily phrased, or because not technically correct, so long as instruction is not misleading, or where the inaccuracy complained of could have had no influence on jury in reaching verdict that could be said to be improper. Neely v. Charleston, 204 Miss. 360, 37 So. 2d 495, 1948 Miss. LEXIS 374 (Miss. 1948).

Fact that instruction is technically inaccurate will not alone cause a reversal of judgment; but when case on appeal is examined as a completed trial, and substantial error has not been committed and a fair and just result has been reached, judgment will be affirmed, notwithstanding error in instruction. Neely v. Charleston, 204 Miss. 360, 37 So. 2d 495, 1948 Miss. LEXIS 374 (Miss. 1948).

Only one of several reasons for reversal selected therefor. Richardson Corp. v. Standard Drug Co., 141 Miss. 92, 106 So. 95, 1925 Miss. LEXIS 211 (Miss. 1925).

Judgment for guest injured in automobile not reversed because of instruction whose error, if any, was harmless. Friis v. Gahan, 139 Miss. 375, 104 So. 170, 1925 Miss. LEXIS 158 (Miss. 1925).

Judgment not reversed for erroneous instruction unless complaining party prejudiced. Hampton v. State, 132 Miss. 154, 96 So. 165, 1923 Miss. LEXIS 43 (Miss. 1923).

If there be evidence which would have supported a contrary verdict the Supreme Court will set aside a verdict rendered on erroneous instructions unless it is clear they could not have influenced the result. Solomon v. City Compress Co., 69 Miss. 319, 10 So. 446, 1891 Miss. LEXIS 65 (Miss. 1891).

41. —Weight and sufficiency of evidence.

When Supreme Court reviews sufficiency of evidence, it looks to all of the evidence before jurors to determine whether or not reasonable, hypothetical juror could find, beyond reasonable doubt, that defendant is guilty. Morgan v. State, 681 So. 2d 82, 1996 Miss. LEXIS 429 (Miss. 1996).

On review of sufficiency of evidence to support conviction, evidence which supports verdict is accepted as true, and state is given benefit of all reasonable inferences flowing from that evidence. Morgan v. State, 681 So. 2d 82, 1996 Miss. LEXIS 429 (Miss. 1996).

When reviewing denial of motion for judgment notwithstanding the verdict (JNOV), Supreme Court is bound to consider evidence in light most favorable to appellee, giving that party benefit of all favorable inferences that may be reasonably drawn from evidence. Luther McGill, Inc. v. Bradley, 674 So. 2d 11, 1996 Miss. LEXIS 210 (Miss. 1996).

A finding of "good cause" for a continuance under § 99-17-1 is a finding of ultimate fact, and should be treated as any other finding of ultimate fact challenged on appeal, i.e., the finding will be undisturbed only where there is in the record substantial, credible evidence from which it may fairly have been made, and will ordinarily be reversed where there is a complete absence of probative evidence in the record. Folk v. State, 576 So. 2d 1243, 1991 Miss. LEXIS 57 (Miss. 1991).

Findings by a trial judge that a confession was admissible are findings of fact, which are treated as any other findings of fact; as long as the trial judge applies the correct legal standards, his or her decision will not be reversed on appeal unless it is manifestly in error or is contrary to the overwhelming weight of the evidence. Berry v. State, 575 So. 2d 1, 1990 Miss. LEXIS 849 (Miss. 1990), cert. denied, 500 U.S. 928, 111 S. Ct. 2042, 114 L. Ed. 2d 126, 1991 U.S. LEXIS 2673 (U.S. 1991).

The factual findings of a chancery court in a civil contempt case are affirmed unless manifest error is present and apparent. However, the Supreme Court is not bound by the manifest error rule when reviewing an appeal of a conviction of criminal contempt; reviewing proceeds ab initio to determine whether on the record the contemnor is guilty of contempt beyond a reasonable doubt. Premeaux v.

Smith, 569 So. 2d 681, 1990 Miss. LEXIS 628 (Miss. 1990).

If a decision of the Workers' Compensation Commission is based on substantial evidence, the circuit court and the Supreme Court are bound by the finding of fact made by the Commission. International Paper Co. v. Kelley, 562 So. 2d 1298, 1990 Miss. LEXIS 274 (Miss. 1990).

A finding of fact is "clearly erroneous" when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. Ponthieux v. State, 532 So. 2d 1239, 1988 Miss. LEXIS 483 (Miss. 1988).

A finding of fact is "clearly erroneous" when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. In re Estate of Varvaris, 528 So. 2d 800, 1988 Miss. LEXIS 264 (Miss. 1988).

Chancellor's findings, on conflicting evidence, are conclusive on appeal unless manifestly wrong. Magnolia Textiles, Inc. v. Gillis, 206 Miss. 797, 41 So. 2d 6, 1949 Miss. LEXIS 302 (Miss. 1949); James v. Federal Royalty Co., 44 So. 2d 542 (Miss. 1950).

Decree of chancellor will not be reversed unless it is manifestly erroneous, and, while it is duty of Supreme Court to affirm if there is sufficient substantial evidence to support chancellor's finding, it is equally its duty to reverse in absence of such support where overwhelming proof is barrier against affirmance of decree. Reed v. Charping, 207 Miss. 1, 41 So. 2d 11, 1949 Miss. LEXIS 312 (Miss. 1949).

Decree of chancellor substantially supported by competent evidence will not be reversed by Supreme Court on appeal. Magnolia Textiles, Inc. v. Gillis, 206 Miss. 797, 41 So. 2d 6, 1949 Miss. LEXIS 302 (Miss. 1949).

Chancellor's finding on conflicting evidence will be affirmed on appeal when his finding is not against weight of evidence and is not manifestly wrong. Williams v. Barlow, 205 Miss. 449, 38 So. 2d 914, 1949 Miss. LEXIS 442 (Miss. 1949).

Only question presented on appeal from decision of chancellor overruling motion to dismiss bill for divorce is whether chancellor was manifestly wrong in his findings and conclusions. Canerdy v. Canerdy, 37 So. 2d 490 (Miss. 1948).

On clear preponderance of evidence in favor of plaintiff, Supreme Court will reverse findings of fact by chancellor based on general and inconclusive testimony. Pannell v. Glidewell, 142 Miss. 77, 107 So. 273, 1926 Miss. LEXIS 63 (Miss. 1926).

Decree on verdict not disturbed unless manifestly wrong. Thomas v. State, 129 Miss. 332, 92 So. 225, 1922 Miss. LEXIS 46 (Miss. 1922); New Orleans & N. E. R. Co. v. Ward, 132 Miss. 462, 96 So. 401, 1923 Miss. LEXIS 56 (Miss. 1923); Louisville & N. R. Co. v. Jones, 134 Miss. 53, 98 So. 230, 1923 Miss. LEXIS 234 (Miss. 1923); Ayers v. Tonkel, 138 Miss. 712, 103 So. 361, 1925 Miss. LEXIS 77 (Miss. 1925); Green v. Everson, 141 Miss. 129, 106 So. 265, 1925 Miss. LEXIS 219 (Miss. 1925); Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926); Pierce v. Garrett, 142 Miss. 641, 107 So. 885, 1926 Miss. LEXIS 129 (Miss. 1926).

Chancellor's decree based on conflicting testimony not disturbed unless manifestly wrong. Grace v. Pierce, 127 Miss. 831, 90 So. 590, 1921 Miss. LEXIS 286 (Miss. 1921); Meek v. Humphreys County, 133 Miss. 386, 97 So. 674, 1923 Miss. LEXIS 135 (Miss. 1923); Starnes v. Nation, 97 So. 881 (Miss. 1923); Planters' Gin & Milling Co. v. Greenville, 138 Miss. 876, 103 So. 796, 1925 Miss. LEXIS 96 (Miss. 1925).

Conviction on insufficient testimony reversed. Adams v. State, 47 So. 787 (Miss. 1908).

42. —Validity and construction of statutes.

Supreme Court will not pass upon constitutionality of statute unless such decision is necessary to dispose of the case. Gatlin v. State, 207 Miss. 588, 42 So. 2d 774, 1949 Miss. LEXIS 371 (Miss. 1949).

Later re-enactment of statute after construction by Supreme Court adopts construction. Burks v. Moody, 141 Miss. 370, 106 So. 528, 1926 Miss. LEXIS 429 (Miss. 1926).

One of two reasonable constructions of statute will be adhered to. Maris v. Lindsey, 124 Miss. 742, 87 So. 12, 1920 Miss. LEXIS 544 (Miss. 1920).

Prior reasonable construction placed upon statute by Supreme Court followed whether the best construction or not. Zama v. Ayers Separate School Dist., 120 Miss. 444, 82 So. 313, 1919 Miss. LEXIS 105 (Miss. 1919).

Supreme Court is bound by former construction of statute re-enacted under that construction. R. J. McLin & Co. v. Worden, 99 Miss. 547, 55 So. 358, 1911 Miss. LEXIS 229 (Miss. 1911).

While the facts of a case may be settled by agreement of the parties the Supreme Court cannot upon the mere concession or admission of counsel declare a statute valid or invalid. Jones v. Madison County, 72 Miss. 777, 18 So. 87, 1895 Miss. LEXIS 33 (Miss. 1895).

43. Disposition of appeal.

Decree of confirmation of title and removal of clouds in suit brought by purchaser of land at foreclosure sale under deed of trust will be modified so as to eliminate finding of confirmation, but affirmed as to removal of clouds when defendant mortgagor remained in possession after foreclosure sale but foreclosure sale was valid. Duncan v. Mars, 44 So. 2d 529 (Miss. 1950).

On appeal to supreme court, verdict given in trial court will not be disturbed where evidence is equally balanced or nearly so, and would warrant verdict for either party. Magnolia Textiles, Inc. v. Gillis, 206 Miss. 797, 41 So. 2d 6, 1949 Miss. LEXIS 302 (Miss. 1949).

44. —Affirmance.

When reviewing denial of motion for judgment notwithstanding the verdict (JNOV), if there is substantial evidence in support of verdict, that is, evidence of such quality and weight that reasonable and fair minded jurors in exercise of impartial judgment might have reached different conclusions, affirmance is required. Luther McGill, Inc. v. Bradley, 674 So. 2d 11, 1996 Miss. LEXIS 210 (Miss. 1996).

"Substantial evidence" in support of a verdict, such as to require affirmance of trial court's denial of appellant's request for directed verdict, is evidence of such quality and weight that reasonable and fair-minded jurors in the exercise of their impartial judgment might have reached different conclusions. McBride v. Chevron U.S.A., 673 So. 2d 372, 1996 Miss. LEXIS 132 (Miss. 1996), modified, 1996 Miss. LEXIS 271 (Miss. May 23, 1996).

Where appellee's counsel states in his brief that careful examination of the record shows no error which he could with confidence assert, and therefore respectfully confesses that cause should be affirmed, supreme court will affirm judgment appealed from without reading the record. Horne v. Burnett's Lumber & Supply Co., 208 Miss. 448, 44 So. 2d 536, 1950 Miss. LEXIS 263 (Miss. 1950).

Affirmance by evenly divided court is binding judicial precedent unless and until it is overruled. Montgomery Ward & Co. v. Harland, 205 Miss. 380, 38 So. 2d 771, 1949 Miss. LEXIS 436 (Miss. 1949); Montgomery Ward & Co. v. Higgins, 201 Miss. 467, 29 So. 2d 267, 1947 Miss. LEXIS 407 (Miss. 1947).

In suit to quiet title, decree of chancellor that covenant in deed prohibiting use of property for any type of textile industry did not prohibit use of described property as place to manufacture garments or other similar articles of wearing apparel given on conflicting evidence equally balanced, or nearly so, will be affirmed on appeal to supreme court. Magnolia Textiles, Inc. v. Gillis, 206 Miss. 797, 41 So. 2d 6, 1949 Miss. LEXIS 302 (Miss. 1949).

In absence of cross-appeal and appellee's declaration failing to demand full amount sheriff could have successfully sued for as fees for serving overseers' commissions, supreme court cannot increase judgment, but will affirm judgment recovered. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

The rule in passing on a ruling of a lower court is that the Supreme Court will look to the whole record, and, if in the light thereof no harm appears to have resulted to the appellant from the ruling complained of, the judgment will be affirmed, though the ruling may have been erroneous when made. Planters' Lumber Co. v. Sibley, 130 Miss. 26, 93 So. 440, 1922 Miss. LEXIS 182 (Miss. 1922).

Judgment for plaintiff affirmed where all questions settled on former appeal adversely to defendant. Supreme Lodge K. P. v. Hines, 109 Miss. 500, 68 So. 485, 1915 Miss. LEXIS 184 (Miss. 1915).

Judgment correct on merits affirmed although minor errors committed on trial. Cumberland Tel. & Tel. Co. v. Jackson, 95 Miss. 79, 48 So. 614, 1909 Miss. LEXIS 225 (Miss. 1909).

Judgment affirmed where testimony essential to consideration of question presented has been stricken from record. Pafhausen v. State, 94 Miss. 103, 47 So. 897, 1908 Miss. LEXIS 29 (Miss. 1908).

Affirmance by Supreme Court of decree of chancery court does not affect the right to request chancery court for leave to file a bill of review based on newly discovered evidence. Hall v. Waddill, 78 Miss. 16, 27 So. 936, 1900 Miss. LEXIS 71 (Miss. 1900).

The affirmance by the Supreme Court of a judgment of a circuit court does not render the judgment more effective in bar of another suit than it was before the appeal. Alabama & V. R. Co. v. McCerren, 75 Miss. 687, 23 So. 423, 1898 Miss. LEXIS 16 (Miss. 1898).

45. —Reversal; remand.

Supreme Court will not per se reverse trial court for failing to order mistrial after witness exclusion rule violation; rather, resultant degree of prejudice to defendant must first demonstrate that trial court abused its discretion. Brown v. State, 682 So. 2d 340, 1996 Miss. LEXIS 427 (Miss. 1996), cert. denied, 520 U.S. 1127, 117 S. Ct. 1271, 137 L. Ed. 2d 348, 1997 U.S. LEXIS 1821 (U.S. 1997).

Remand was required to determine reasonable amount of attorney fees to award perpetual trust trustee, incurred to ensure proper substitution of trustee by new cemetery owner. Bank of Mississippi v. Southern Mem. Park, 677 So. 2d 186, 1996 Miss. LEXIS 315 (Miss. 1996).

When reviewing denial of motion for judgment notwithstanding the verdict (JNOV), if facts considered point so overwhelmingly in favor of appellant that reasonable men could not have arrived at contrary verdict, Supreme Court is required to reverse and render. Luther McGill, Inc. v. Bradley, 674 So. 2d 11, 1996 Miss. LEXIS 210 (Miss. 1996).

In order to remand case for an additur on damages, Supreme Court must find that the jury was biased or prejudiced or that the verdict was against overwhelming weight of the evidence. McBride v. Chevron U.S.A., 673 So. 2d 372, 1996 Miss. LEXIS 132 (Miss. 1996), modified, 1996 Miss. LEXIS 271 (Miss. May 23, 1996).

Where, two years after a suit was filed for the establishment of a land line, the chancery court entered an order dismissing without prejudice the bill of complaint, a temporary injunction and a cross bill, the Supreme Court, not being an original trier of fact, would not determine the case, but would remand for reopening, to permit any party to introduce further or other evidence, and for a final decision. Everett v. Berry, 244 So. 2d 736, 1971 Miss. LEXIS 1347 (Miss. 1971).

Where fine greater than that permitted by Code 1942, § 2562, providing for maximum penalties in misdemeanor cases, was imposed for violation of Code 1942 § 2613, subsection b, providing only a minimum penalty for second conviction for unlawful possession of intoxicating liquors, supreme court, upon reversal, would remand cause to trial court for imposition of sentence. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

Where four justices of the Supreme Court vote to reverse judgment of conviction for attempted rape, but only three vote to reverse and dismiss, the judgment will be reversed and the cause remanded. Street v. State, 196 Miss. 818, 18 So. 2d 297, 1944 Miss. LEXIS 259 (Miss. 1944).

Where, at beginning of trial, accused's counsel caused state's witness to be summoned for accused and requested private interview with him, but declined court's offer to permit conference in sheriff's hearing, and failed to renew request after state examined witness, and examination was full and complete, case will not be reversed for such reason. Frazier v. State, 142 Miss. 456, 107 So. 674, 1926 Miss. LEXIS 110 (Miss. 1926).

To reverse, an error must have been committed in the trial favorable to appellee and prejudicial to appellant. Calicoat v. State, 131 Miss. 169, 95 So. 318, 1922 Miss. LEXIS 296 (Miss. 1922).

Judgment reversed by majority of Supreme Court, although not concurring in reasons therefor. Aetna Ins. Co. v. Robertson, 131 Miss. 343, 94 So. 7, 1922 Miss. LEXIS 263 (Miss. 1922), writ of error dismissed, 263 U.S. 673, 44 S. Ct. 5, 68 L. Ed. 500, 1923 U.S. LEXIS 2833 (U.S. 1923), cert. denied, 263 U.S. 698, 44 S. Ct. 5, 68 L. Ed. 512, 1923 U.S. LEXIS 2968 (U.S. 1923).

Judgment of trial court not reversed except by majority of participating judges of Supreme Court holding specific supporting ruling erroneous. Aetna Ins. Co. v. Robertson, 131 Miss. 343, 94 So. 7, 1922 Miss. LEXIS 263 (Miss. 1922), writ of error dismissed, 263 U.S. 673, 44 S. Ct. 5, 68 L. Ed. 500, 1923 U.S. LEXIS 2833 (U.S. 1923), cert. denied, 263 U.S. 698, 44 S. Ct. 5, 68 L. Ed. 512, 1923 U.S. LEXIS 2968 (U.S. 1923).

Notwithstanding that petition for setting aside default judgment failed to set forth the character of the intended defense, judgment setting aside such default judgment will not be reversed on appeal to the Supreme Court after a trial on the merits wherein the defendant attempted a substantial defense. Planters' Lumber Co. v. Sibley, 130 Miss. 26, 93 So. 440, 1922 Miss. LEXIS 182 (Miss. 1922).

Mere confession of error does not necessitate reversal of judgment or decree. Webb Sumner Oil Mill v. Southern Coal Co., 129 Miss. 127, 91 So. 698, 1922 Miss. LEXIS 15 (Miss. 1922).

Decree reversed where recovery of an impossible amount is decreed and course of trial is not entirely satisfactory. Quitman Lumber Co. v. Turner, 48 So. 819 (Miss. 1909).

Where only possible judgment reached, case will not be reversed because some of defendant's pleas were traversed on immaterial issues. Evans v. Lilly & Co., 95 Miss. 58, 48 So. 612, 1909 Miss. LEXIS 383 (Miss. 1909).

Where accused is found entitled to bail on appeal from order denying it, and record does not show facts on which to determine amount, case will be remanded for bail to be fixed in lower court. Saunders v. Stephenson, 94 Miss. 676, 47 So. 783, 1909 Miss. LEXIS 328 (Miss. 1909).

No reversal of judgment unless prejudicial error shown. Rector v. Shippey, Outzen & Co., 93 Miss. 254, 46 So. 408, 1908 Miss. LEXIS 80 (Miss. 1908).

Case remanded where lower court passed on only one of two points involved. Edwards v. Kingston Lumber Co., 92 Miss. 598, 46 So. 69, 1908 Miss. LEXIS 207 (Miss. 1908).

46. —Granting of new trial.

On appeal from conviction of unlawful possession of intoxicating liquor all Supreme Court can grant defendant is new trial where evidence against him was so lacking in weight that court is justified in reversing case and defendant failed to ask for directed verdict in lower court at end of all evidence for both sides but incorporated in motion for new trial ground that verdict of jury was against overwhelming weight of evidence. Faust v. State, 43 So. 2d 379 (Miss. 1949).

Supreme Court may grant new trial only where trial court has erroneously refused to do so. Hattiesburg Chero Cola Bottling Co. v. Price, 143 Miss. 14, 108 So. 291, 1926 Miss. LEXIS 239 (Miss. 1926).

When decree of chancery court, rendered on bill, answer, and proof, is reversed and remanded generally, it must be tried de novo. Pigford v. Ladner, 142 Miss. 435, 107 So. 658, 1926 Miss. LEXIS 103 (Miss. 1926).

On reversal for lack of evidence, case remanded for new trial on absence of request below for directed verdict. Berry v. Magee, Gibson & Magee, 140 Miss. 307, 105 So. 518, 1925 Miss. LEXIS 263 (Miss. 1925).

New evidence of defendant's absence when crime committed not ground for new trial. Quick v. State, 133 Miss. 634, 98 So. 108 (Miss. 1923).

New trial not granted for newly discovered evidence, where issue non est factum and due diligence not shown. John A. Shank & Co. v. Geiger, 132 Miss. 320, 96 So. 515, 1923 Miss. LEXIS 63 (Miss. 1923).

Jury's finding held contrary to evidence and new trial awarded. Mobile & O. R. Co. v. Bennett, 127 Miss. 413, 90 So. 113, 1921 Miss. LEXIS 239 (Miss. 1921).

Newly discovered evidence, impeaching material witness, is ground for new trial. Campbell v. State, 123 Miss. 713, 86 So. 513, 1920 Miss. LEXIS 73 (Miss. 1920).

Supreme Court can award new trial on issue of damages only. Yazoo & M. V. R. Co. v. Scott, 108 Miss. 871, 67 So. 491, 1914 Miss. LEXIS 287 (Miss. 1914).

The Supreme Court will set aside a verdict and grant a new trial on consideration of the facts alone if they fail to sustain it. Monroe v. State, 71 Miss. 196, 13 So. 884, 1893 Miss. LEXIS 146 (Miss. 1893); Harris v. State, 71 Miss. 462, 14 So. 266, 1893 Miss. LEXIS 98 (Miss. 1893).

If it appears that a fourth new trial is unauthorized the court will vacate the order and remand for judgment nunc pro tunc on the third verdict, and if it was authorized the court will affirm with directions to proceed to another trial. Tagert v. Baker, 57 Miss. 303, 1879 Miss. LEXIS 77 (Miss. 1879).

Code 1906 § 800, (see Code 1942 § 1536), providing that no more than two trials shall be granted to the same party in any case, applies only to the circuit court. The power of the Supreme Court to award new trials for errors of law is without limit. Shelby v. Offutt, 51 Miss. 128, 1875 Miss. LEXIS 23 (Miss. 1875).

47. —Dismissal of appeal.

Because the chancellor retained jurisdiction to supervise the reunification process and to revisit the case in six months for further review, its order and opinion did not constitute a final, appealable judgment, and thus, the order was, not appropriate for consideration on direct appeal; the order left open for consideration in the chancery court the issues of custody and visitation. Wigington v. McCalop, 191 So. 3d 124, 2016 Miss. LEXIS 192 (Miss. 2016).

Appeal from a decision in an election contest concerning a primary mayoral race was dismissed for lack of jurisdiction under Miss. Code Ann. § 9-3-9 because documents required under Miss. Code Ann. § 23-15-927 were not included in the appellate record. Moore v. Parker, 2007 Miss. LEXIS 127 (Miss. Mar. 8, 2007), op. withdrawn, sub. op., 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

Where the court declined to set aside a jury verdict finding the defendant guilty of rape, but set aside the sentence imposed by the court, found the defendant insane, and committed him to a state hospital for treatment, and directed that defendant be remanded to the circuit court for imposition of sentence, when and if he regained his sanity, there was final judgment, and the supreme court was without jurisdiction and would dismiss the appeal and remand the case to the circuit court. Lang v. State, 238 Miss. 677, 119 So. 2d 608, 1960 Miss. LEXIS 456 (Miss. 1960).

Where prosecutor erroneously called defendant's estranged wife to the witness stand causing defendant to object in presence of the jury to her competency as witness against him, defendant was not entitled to reversal since he made no motion for a mistrial at time of trial. Blackwell v. State, 44 So. 2d 409, 1950 Miss. LEXIS 457 (Miss. 1950).

Statute authorizing dismissal of "pending" causes for want of prosecution held applicable only to cases not yet decided, and hence was inapplicable where judgment below had been reversed on appeal, although under court rule no mandate had been issued because of appellee's failure to pay costs. Dubois v. Thomas, 173 Miss. 697, 161 So. 868, 1935 Miss. LEXIS 239 (Miss. 1935).

Appellant cannot dismiss appeal, unless granted right to do so by the court. Wolf v. Mississippi Valley Trust Co., 130 Miss. 144, 93 So. 581, 1922 Miss. LEXIS 192 (Miss. 1922).

Appellant allowed to dismiss appeal from decree overruling demurrer to bill, where all questions cannot be decided on appeal because supplemental bill had been filed by appellee. Wolf v. Mississippi Valley Trust Co., 130 Miss. 144, 93 So. 581, 1922 Miss. LEXIS 192 (Miss. 1922).

Supreme Court may dismiss bill on affirming decree sustaining demurrer. Parker v. Board of Sup'rs, 125 Miss. 617, 88 So. 172, 1921 Miss. LEXIS 149 (Miss. 1921).

Appeal dismissed where real purpose is to obtain affirmance. Smith v. Citizens' Bank & Trust Co., 125 Miss. 139, 87 So. 488, 1920 Miss. LEXIS 341 (Miss. 1920).

Where no petition for appeal and no appeal bond tendered Supreme Court cannot docket and dismiss cause. Calcote v. Stampley, 114 Miss. 887, 75 So. 689, 1917 Miss. LEXIS 97 (Miss. 1917).

Court cannot dismiss appeal and order writ of procedendo to issue without giving appellant an opportunity to defend. Wilson v. Handsboro, 96 Miss. 376, 50 So. 982, 1909 Miss. LEXIS 53 (Miss. 1909).

Appeal dismissed where no bond in record on appeal from justice to the circuit court. Johnson v. Marshall, 48 So. 182 (Miss. 1909), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929); Humphreys v. McFarland, 48 So. 182 (Miss. 1909), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929).

Where the record of a case at law does not show an appeal from a justice's court to the circuit court and the sum demanded is less than $200, the Supreme Court of its own motion will dismiss the appeal for want of jurisdiction, although the stenographer's notes recite that the case was appealed to the circuit court from a justice's court. Gardner v. New Orleans & N. E. R. Co., 78 Miss. 640, 29 So. 469, 1900 Miss. LEXIS 160 (Miss. 1900), overruled, Jones v. State, 155 Miss. 364, 123 So. 882, 1929 Miss. LEXIS 261 (Miss. 1929).

In default of payment of attorney fees allowed to wife on appeal by husband from a decree in a suit for divorce within the time allowed by the court therefor, the bill will be dismissed. Hall v. Hall, 77 Miss. 741, 27 So. 636, 1900 Miss. LEXIS 22 (Miss. 1900).

48. —Restitution.

The Supreme Court has inherent power on reversing a judgment, where the facts appear of record, to award a restitution to the party dispossessed under the judgment pending his appeal. Hall v. Wells, 54 Miss. 289, 1877 Miss. LEXIS 1 (Miss. 1877).

49. Procedure and practice.

Although trial court initially determines in forma pauperis status, Supreme Court is in unique position of deciding which inmate, if any, abuses in forma pauperis status, and thus Supreme Court will determine when such abuse is oppressive to judiciary, and by order will apprise trial court to restrict privilege if necessary. Hyde v. State, 666 So. 2d 445, 1995 Miss. LEXIS 639 (Miss. 1995).

Trial courts should advise criminal defendants of their rights concerning appeal on the record at the time of sentencing and should solicit a decision in that regard. Should a decision be made on the record to appeal, the defendant should be advised that the decision will stand unless a written statement to the contrary, signed by the defendant and the attorney, is filed with the court. Should the decision be made to waive appeal, the defendant should nevertheless be informed of the timeliness for appeal and told that the decision to waive shall stand unless the defendant gives written notice to the court and the attorney prior to the expiration of the time. Should no decision be made, the court should inform the defendant that the failure to express the desire to appeal shall be considered a waiver of the right to appeal and that such waiver will stand unless the defendant gives written notice to the court and counsel prior to the expiration of the time in which to perfect the appeal. Wright v. State, 577 So. 2d 387, 1991 Miss. LEXIS 182 (Miss. 1991).

Neither the circuit court nor the Supreme Court had the authority to consider a county supervisor's attempted appeal from an order of the board of supervisors finding that he had removed himself from his district and declaring his office vacant under the authority of § 25-1-59, where the supervisor filed a notice of appeal to the circuit court but failed to file a bill of exceptions as required by § 11-51-75. Moore v. Sanders, 569 So. 2d 1148, 1990 Miss. LEXIS 445 (Miss. 1990).

A motion to stay hearing on an appeal, filed in reply to a suggestion of error, until the trial court should have an opportunity to "perfect the record" and "furnish a supplemental transcript herein" is a procedure unknown in this state. Irwin v. Vick, 203 Miss. 44, 34 So. 2d 725, 1948 Miss. LEXIS 230 (Miss. 1948).

Case may not on appeal be transformed into a different one from that in trial court. Noxubee County v. Long, 141 Miss. 72, 106 So. 83, 1925 Miss. LEXIS 209 (Miss. 1925).

Limiting time for argument not error unless accused prejudiced; where the record showed no prejudice, the time allowed not being consumed, there was no error in limitation. McLeod v. State, 130 Miss. 83, 92 So. 828, 1922 Miss. LEXIS 199 (Miss. 1922).

50. —Pleading.

Motion to strike portions of former husband's brief would be denied, where motion appeared to be just another in the series of actions and incidents the parties had used to harass each other at their child's expense. Touchstone v. Touchstone, 682 So. 2d 374, 1996 Miss. LEXIS 534 (Miss. 1996).

Acceptance of payment of judgment by plaintiff must be raised in Supreme Court by special plea in bar of appeal and not motion to dismiss. Adams v. Carter, 92 Miss. 578, 46 So. 59, 1908 Miss. LEXIS 201 (Miss. 1908).

51. —Parties.

One neither necessary nor proper party to equity suit cannot intervene. Crystal Springs Bank v. New Orleans Cattle Loan Co., 132 Miss. 52, 95 So. 520, 1923 Miss. LEXIS 5 (Miss.), modified, 132 Miss. 454, 96 So. 309, 1923 Miss. LEXIS 54 (Miss. 1923).

52. —Evidence.

Although the prosecutor told a sequestered witness of the testimony of another witness before the sequestered witness gave rebuttal testimony, the admission of the witness' rebuttal testimony did not result in sufficient prejudice to require reversal of the conviction where her rebuttal testimony was consistent with her testimony in the case-in-chief. Doby v. State, 532 So. 2d 584, 1988 Miss. LEXIS 500 (Miss. 1988).

Supreme Court has right to make use of knowledge of popular and general customs of people of state and public conditions therein. Moore v. Grillis, 205 Miss. 865, 39 So. 2d 505, 1949 Miss. LEXIS 472 (Miss. 1949).

53. —Judgment.

Where appeal with supersede as was pending in the court and issue remained open, Supreme Court could correct judgment awarding appellee impleaded fund which erroneously included interest on the fund, on motion, although judgment of circuit court was rendered against appellee rather than against the fund. Gayden v. Kirk, 208 Miss. 283, 44 So. 2d 410, 1950 Miss. LEXIS 247 (Miss. 1950).

Supreme Court will not enter final decree on appeal when case has features of detail which make it better that final decree be worked out and entered by chancery court in conformity to opinion of supreme court. Dyer v. Russell, 204 Miss. 719, 38 So. 2d 104, 1948 Miss. LEXIS 400 (Miss. 1948).

Seventh Amendment to United States Constitution, preserving right of trial by jury, inapplicable to state courts, and does not prevent final judgment on appeal in state court contrary to verdict, where trial court should have directed verdict. Gulf & S. I. R. Co. v. Hales, 140 Miss. 829, 105 So. 458, 1925 Miss. LEXIS 313 (Miss. 1925).

Common law on subject remains as if case subsequently overruled had never been decided. Gross v. State, 135 Miss. 624, 100 So. 177, 1924 Miss. LEXIS 50 (Miss. 1924).

Recitals of jurisdictional facts in judgment are controlled by record on appeal. Hattiesburg Hardware Co. v. Pittsburg Steel Co., 115 Miss. 663, 76 So. 570, 1917 Miss. LEXIS 247 (Miss. 1917).

Supreme Court has full jurisdiction over orders and judgments made during term until term expires. Fairley v. State, 114 Miss. 510, 75 So. 374, 1917 Miss. LEXIS 57 (Miss. 1917).

Judgment on appeal is res judicata, but not as to new case made by new pleading and new evidence. Middleton v. Davis, 105 Miss. 152, 62 So. 164, 1913 Miss. LEXIS 190 (Miss. 1913).

The Supreme Court after deciding a case and giving judgment cannot sustain a motion to correct the judgment filed at a subsequent term because of the existence of some fact neither pleaded nor proved in the court below, on the suggestion that such course is necessary to make the judgment conform to the decision. Le Blanc v. Illinois C. R. Co., 73 Miss. 463, 19 So. 211, 1895 Miss. LEXIS 153 (Miss. 1895).

The Supreme Court is without power to correct its own judgment at a subsequent term on account of any error of law or of fact, although to prevent a failure of justice it will sometimes correct a judgment at a subsequent term where the circumstances are peculiar and exceptional, as in the case of fraud on the part of the person obtaining the judgment, the failure of the judgment as entered to accord with that intended to be entered, some misconception by the court of the case made in the record, or other circumstances of like nature. Le Blanc v. Illinois C. R. Co., 73 Miss. 463, 19 So. 211, 1895 Miss. LEXIS 153 (Miss. 1895); Cotten v. McGehee, 54 Miss. 621, 1877 Miss. LEXIS 59 (Miss. 1877).

54. —Attorney fees.

On appeal by a husband from a decree in a suit for divorce directing him to pay alimony pendente lite and counsel fees to the wife the Supreme Court has the power to award the wife a reasonable solicitor's fee for reciting the appeal. Hall v. Hall, 77 Miss. 741, 27 So. 636, 1900 Miss. LEXIS 22 (Miss. 1900).

RESEARCH REFERENCES

ALR.

Questions or legal theories affecting trust estates as subject to consideration on appeal though not raised below. 11 A.L.R.2d 317.

Sufficiency of random sampling of drug or contraband to establish jurisdictional amount required for conviction. 45 A.L.R.5th 1.

Civil actions removable from state court to federal court under 28 U.S.C.S. § 1443. 159 A.L.R. Fed. 377.

Who is "person acting under" officer of United States or any agency thereof for purposes of availability of right to remove state action to federal court under 28 U.S.C.A. § 1442(a)(1). 166 A.L.R. Fed. 297.

Am. Jur.

4 Am. Jur. 2d, Appellate Review §§ 75 et seq.

5 Am. Jur. 2d, Appellate Review §§ 552, 618.

§ 9-3-11. The chief justice; presiding justices.

The judge of the Supreme Court who has been for the longest time continuously a member of the court shall be chief justice; and, the two (2) judges of the supreme court who have served continuously for the next longest time shall be presiding justices. In case of the absence of the chief justice, the presiding justice who has been for the longest time continuously a member shall preside. In the event that two (2) or more judges of the Supreme Court shall have served as members of the Supreme Court for equal periods of time, then seniority shall be determined according to the length of time that such judges shall have been members of the Mississippi State Bar.

HISTORY: Codes, Hutchinson's 1848, ch. 55, art. 27; 1857, ch. 63, art. 18; 1871, § 420; 1880, § 1413; 1892, § 4351; 1906, § 4917; Hemingway's 1917, § 3193; 1930, § 3362; 1942, § 1946; Laws, 1976, ch. 305, eff from and after May 1, 1976.

Cross References — Administrative Office of Courts to assist Chief Justice of Supreme with his administrative duties, see § 9-21-3.

§ 9-3-12. Resignation and retirement of judges age 68 years and older; services and compensation of retired judge.

(1) Any judge of the Mississippi Supreme Court who has reached the age of sixty-eight (68) years, and who resigns as hereafter provided, may retire from active service as Chief, Presiding, or Associate Justice of the Supreme

Court by forwarding a written resignation to the Governor, with a copy to the Supreme Court. Any vacancy on the Supreme Court shall be filled as provided by law. Such judge shall perform for the judges of the Supreme Court such service as the court may designate from time to time. There shall be no more than three (3) such judges serving at any one (1) time and each judge shall serve for a term equal to the balance of the term for which he was last elected by popular vote as a Supreme Court judge; provided, however, no such judge shall serve for a longer period than four (4) years. Such judge shall receive a salary equivalent to two-thirds (⅔) of the salary of an associate justice.

(2) During his tenure, such judge shall continue to be deemed an official elected by popular vote for the remainder of the term to which he was elected by popular vote as a judge of the Supreme Court within the meaning of subsection (f) of Section 25-11-111 of the Mississippi Code of 1972, but such judge shall not be entitled to vote as to the decision of any case heard by the Supreme Court.

(3) The provisions of this section shall not in any manner be construed to require any judge to resign, or to alter, limit or modify the privileges of a Supreme Court judge to resign from active service and to retire in the manner provided by law, or the privilege of a Supreme Court judge who so retires to receive full retirement benefits in the manner provided by law. However, no such judge who resigns under the provisions of this section shall receive retirement benefits while serving under the provisions of this section.

(4) The Supreme Court may, by order spread upon its minutes, give a name or title to the judicial positions created by the provisions of this section.

HISTORY: Laws, 1973, ch. 452, §§ 1-4; Laws, 1994, ch. 335, § 1, eff from and after passage (approved April 14, 1994).

Cross References — Appointment of special judges to serve on emergency basis, see § 9-1-105.

Designation of certain retired judges as Senior Judges, see § 9-1-107.

Recall of retired Supreme Court justices, see § 9-3-6.

RESEARCH REFERENCES

Am. Jur.
46 Am. Jur. 2d, Judges § 15.

CJS.
48A C.J.S., Judges §§ 61, 62.

§ 9-3-13. Clerk of Supreme Court to take oath and give bond.

The clerk of the Supreme Court, before he enters on the discharge of the duties of his office, shall take the oath prescribed in the constitution, and enter into bond with at least two sufficient sureties, to be approved by the court, or in vacation by two of the judges, payable to the state in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office. The bond shall be recorded in the minutes of the court, and, immediately thereafter deposited and filed in the office of the secretary of state.

HISTORY: Codes, Hemingway's 1917, § 3226; 1930, § 3363; 1942, § 1947; Laws, 1908, ch. 143.

Cross References — Provisions common to court clerks, see §§ 9-1-27 et seq.

§ 9-3-14. Appointment of clerk of Supreme Court.

The clerk of the Supreme Court shall be appointed by majority vote of the Supreme Court and shall serve at the pleasure of the court.

HISTORY: Laws, 1979, ch. 393, eff from and after passage (approved March 19, 1979).

Cross References — Provisions common to court clerks, see §§ 9-1-27 et seq.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court §§ 2-6.

§ 9-3-15. How clerk of Supreme Court may appoint deputies.

The clerk of the Supreme Court shall have power, with the approbation of the court, or of the judges in vacation, to appoint one or more deputies, who shall take the oath of office, and who thereupon shall have power to do and perform all the acts and duties which their principal may lawfully do; such approval, when given by the judges in vacation, shall be in writing, and shall be entered on the minutes of the court at the next term.

HISTORY: Codes Hutchinson's 1848, ch. 27, class 2, art. 1 (12); class 3, art. 1 (10); 1857, ch. 61, art. 17, ch. 62, art. 13; 1871, §§ 551, 990; 1880, § 2281; 1892, § 930; 1906, § 1006; Hemingway's 1917, § 726; 1930, § 747; 1942, § 1662.

Cross References — Provisions common to court clerks, see §§ 9-1-27 et seq.

JUDICIAL DECISIONS

1. In general.

Acting as guardian of the person or estate of an habitual drunkard is not one of the ex officio duties of a clerk of the chancery court, but devolves upon him when, but not unless, he is appointed as such by a decree of that court, and therefore is not within the ex officio powers vested in a deputy chancery clerk by the statute. O'Bannon v. Henrich, 191 Miss. 815, 4 So. 2d 208, 1941 Miss. LEXIS 176 (Miss. 1941).

Deputy circuit clerk may appoint justice of peace to preside over eminent domain court. Western Union Tel. Co. v. Louisville & N. R. Co., 107 Miss. 626, 65 So. 650, 1914 Miss. LEXIS 129 (Miss. 1914), aff'd, 250 U.S. 363, 39 S. Ct. 513, 63 L. Ed. 1032, 1919 U.S. LEXIS 1756 (U.S. 1919).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 42.

§ 9-3-17. Duties of clerk.

The clerk shall carefully keep a minute of the proceedings of the court for each day, drawn up at large in a record book to be kept by him for that purpose; he shall seasonably record the judgments, decrees, orders, and decisions of the Court of Appeals and the Supreme Court; he shall safely keep all records, files, books and papers committed to his charge, and also all presses and furniture belonging to his office, and deliver such records, files, books, papers, presses and furniture to his successor in office; and in case of refusal or failure to deliver whatever belongs to his office to his successor, his bond may be put in suit by the Attorney General; he shall prepare for any person demanding the same a certified copy of any paper, record, decree, judgment, or entry on file in his office, proper to be certified, for the fees prescribed by law. The transcript filed in the Court of Appeals and Supreme Court, the process in each case, and the judgment or decree of the court thereon, shall be the final record in the cause, and certified as such by the clerk whenever an exemplification of the judgment or decree of the court may be required.

HISTORY: Codes, Hutchinson's 1848, ch. 27, class 4, art. 2 (7); 1857, ch. 63, art. 26; 1871, § 427; 1880, § 1445; 1892, § 4384; 1906, § 4949; Hemingway's 1917, § 3225; 1930, § 3364; 1942, § 1948; Laws, 1993, ch. 518, § 20, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Provisions common to court clerks, see §§ 9-1-27 et seq.

Administrative Office of Courts to assist court clerks, see § 9-21-3.

When the clerk must refuse to accept a record, see Miss. Sup. Ct., Rule 1.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

CJS.

21 C.J.S., Courts §§ 337 et seq.

§ 9-3-19. Civil docket.

The clerk of the Supreme Court shall make out and keep a docket of civil cases pending in or which may be brought to the court and place thereon all such cases in the order in which they may have been or may be filed in his office, irrespective of districts.

HISTORY: Codes, Hemingway's 1917, § 3181; 1930, § 3365; 1942, § 1949; Laws, 1916, ch. 163.

Cross References — Call and order of the docket, in cases where oral argument is and is not requested, see Miss. R. App. P. 23.

§ 9-3-21. Criminal docket.

The clerk shall keep a docket of criminal cases, on which he shall enter all criminal cases brought before the court in the order in which they may be sent up or certified; and he shall keep such other dockets as may be deemed proper by the court. Provided, however, that all cases brought before the court in which the defendant has been sentenced to suffer the death penalty shall be preference cases, and shall be set down for hearing and submission not later than sixty (60) days after the filing of the transcript of the record in the office of the clerk of the Supreme Court. The Supreme Court, by order upon its minutes, for good cause shown and to prevent injustice, may extend the time for hearing or submission in any case in which the defendant has been sentenced to suffer the death penalty.

HISTORY: Codes, 1892, § 4386; 1906, § 4951; Hemingway's 1917, § 3227; 1930, § 3366; 1942, § 1950; Laws, 1954 Ex. ch. 19; Laws, 1977, ch. 458, § 11, eff from and after passage (approved April 13, 1977).

§ 9-3-23. Allowance for books.

The Supreme Court shall make allowance to the clerk for all needful sums for supplying the office with necessary books, stationery, furniture, and presses for preserving the records and for the safe-keeping of the books and papers belonging to the office. The allowance, being certified to the auditor of public accounts by any of the judges, shall be paid out of the appropriation for the judicial department.

HISTORY: Codes, Hutchinson's 1848, ch. 27, class 4, art. 1 (32); 1857, ch. 63, art. 22; 1871, § 422; 1880, § 1411; 1892, § 4349; 1906, § 4915; Hemingway's 1917, § 3191; 1930, § 3367; 1942, § 1951.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 9-3-25. Old records; how dealt with.

The Supreme Court of the state of Mississippi is authorized to require its clerk, by order to that effect entered on its minutes, to destroy the transcript of the record, briefs of counsel, and related documents in any case appealed to it from a lower court after the expiration of five years from the rendition of the final judgment in the case by the Supreme Court. Before destroying such records the clerk of the supreme court shall advise the director of the department of archives and history of the contemplated destruction of the records, and, if the director of the department of archives and history shall so desire, the records, or such of them as he may desire, shall not be destroyed, but shall be immediately delivered to him for preservation in his office.

The transcripts of all existing records, briefs of counsel, and all other related documents, which the said clerk is not authorized to destroy, shall be collected by said clerk, under the direction of the Supreme Court, shall be cleaned, organized, and placed in shelves or files with adequate identifications of such records, and shall be maintained by the clerk in a place or places accessible to lawyers, judges and the general public, and in a manner best suited to their preservation. The capitol commission shall provide additional adequate and proper space for the storage of all such records, which in the opinion of the supreme court cannot be stored conveniently and efficiently in the clerk's record storage room of the new capitol adjoining the courtroom.

HISTORY: Codes, 1930, § 3368; 1942, § 1952; Laws, 1930, ch. 71; Laws, 1964, ch. 345, eff from and after passage (approved April 6, 1964).

Editor's Notes — Section 29-5-1, as added by Laws, 1984, Chapter 488, § 7, provided, at subsection (2) therein, that the words "capitol commission" appearing in the laws of the state shall be construed to mean the bureau of capitol facilities of the office of general services. Thereafter, Laws of 1989, Chapter 544, § 24, amended Section 7-1-451 to provide that the term "Office of General Services" appearing in any law of the state shall mean the Department of Finance and Administration.

Cross References — Archives and Records Management Law, generally, see §§ 25-59-1 et seq.

Requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

§ 9-3-27. Supreme Court judges may employ secretaries and research assistants for the court.

The judges of the Supreme Court are authorized and empowered to employ such number of secretaries and research assistants to said court as the court may deem necessary for its efficient operation, provided, that each of said research assistants herein authorized shall be qualified members of the Mississippi State Bar, or qualified for admission thereto under the laws of this state. They shall each receive a salary to be fixed by the judges of the Supreme Court, through an order entered on the minutes of said court, within the appropriation for the payment of such salaries in the Supreme Court. Said secretaries and research assistants, upon entering into the discharge of their duties, shall take an oath to be administered by one of the judges of said court that they will faithfully discharge the duties of said office and that they will not disclose the secrets or deliberations of the court, and they shall be removed at the pleasure of the court. Said secretaries and assistants shall be paid on a certificate by the chief justice or by a justice appointed by him to so act to the auditor of public accounts, who shall issue his warrant for the amount or amounts so certified to the state treasurer.

HISTORY: Codes, Hemingway's 1917, § 3151; 1930, § 3409; 1942, § 1993; Laws,

1910, ch. 232; Laws, 1924, ch. 340; Laws, 1928, ch. 187; Laws, 1948, ch. 219; Laws, 1950, ch. 337; Laws, 1952, ch. 246; Laws, 1964, ch. 346, § 2; Laws, 1966 Ex Sess, ch. 26, § 1; Laws, 1968, ch. 340, § 1, eff from and after passage (approved April 29, 1968).

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

OPINIONS OF THE ATTORNEY GENERAL

A board of supervisors has no power to require a chancery clerk, circuit clerk, or person holding both offices, to personally perform official duties when the duties incumbent upon a chancery clerk, a circuit clerk or the person who holds both offices, are in fact being properly and timely performed by the deputy; regardless of whether the board hires a recording clerk for the board minutes, it must still pay the chancery clerk those fees and compensation that are mandatory; there is no authority that would permit the board to require a chancery clerk to take down the proceedings of the board in long hand rather than short hand; since the compensation of the deputy clerk is by salary, not by fees, the fees that accrue will accrue to the clerk, not the deputy. Johnson, January 9, 1998, A.G. Op. #97-0808.

§ 9-3-28. Repealed.

Repealed by Laws, 1976, ch. 430, § 2, eff from and after December 31, 1978.

§ 9-3-28. [En Laws, 1976, ch. 430, § 1]

Editor's Notes — Former § 9-3-28 authorized the Supreme Court to request active chancery and circuit court judges to sit temporarily as supreme court commissioners, and provided for the duties, expenses and oath of commissioners.

§ 9-3-29. Officers to attend the court; marshal and deputy marshals appointed; salaries.

The Supreme Court may, by order entered on its minutes, appoint a marshal and such deputy marshals as the court may deem necessary not to exceed three (3), who shall hold their places during the pleasure of the court, and shall attend its sessions, and perform all the duties of a sheriff and deputies attending court, and shall obey all lawful orders of the court. Said marshal and deputy marshals shall each receive a salary to be fixed by the judges of the Supreme Court, through an order entered on the minutes of said court, within its appropriation. They shall be paid on a certificate by the chief justice, or by a justice appointed by him to so act, to the Auditor of Public Accounts, who shall issue his warrant for the amount or amounts so certified to the State Treasurer.

HISTORY: Codes, 1880, § 1451; 1892, § 4387; 1906, § 4952; Hemingway's 1917,

§ 3228; 1930, § 3369; 1942, § 1953; Laws, 1902, ch. 112; Laws, 1910, ch. 221; Laws, 1920, ch. 115; Laws, 1922, ch. 159; Laws, 1966 Ex Sess, ch. 25, § 1; Laws, 1998, ch. 522, § 1, eff from and after July 1, 1998.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 9-3-31. Court may require sheriff of Hinds county to attend.

The Supreme Court may at any time require the sheriff of Hinds county, with a competent number of deputies, to attend and perform all lawful orders of the court; and, for any failure in this, after notice of the requirement by the court, the sheriff may be punished by the court for a contempt; and for attending the court he shall be allowed two dollars a day for each person so attending, to be paid as the marshal and porter are paid. And at all times, when proper, the court shall dispense with the services of a marshal and require the said sheriff to perform all its duties.

HISTORY: Codes, 1880, §§ 1452, 1453; 1892, § 4388; 1906, § 4953; Hemingway's 1917, § 3229; 1930, § 3370; 1942, § 1954.

§§ 9-3-33 and 9-3-35. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-3-33. [Codes, Hutchinson's 1848, ch. 55, art. 2 (5); 1857, ch. 63, art. 3; 1871, § 404; 1880, § 1404; 1892, § 4344; 1906, § 4908; Hemingway's 1917, § 3186; 1930, § 3373; 1942, § 1957]

§ 9-3-35. [Codes, 1880, § 1406; 1892, § 4346; 1906, § 4912; Hemingway's 1917, § 3188; 1930, § 3374; 1942, § 1958]

Editor's Notes — Former § 9-3-33 granted Supreme Court judges the power to grant certain appeals.

Former § 9-3-35 authorized the Supreme Court to make all orders and issue all process.

§ 9-3-37. Issues of fact may be tried.

The supreme court may try and determine all issues of fact which may arise out of any appeal before it and be necessary to the disposition thereof, and, to this end, may, by order in each case, prescribe in what way evidence may be produced before it on the issue.

HISTORY: Codes, 1880, § 1412; 1892, § 4350; 1906, § 4916; Hemingway's 1917, § 3192; 1930, § 3376; 1942, § 1960.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Specific issues of fact.

1. In general.

A divorced wife appealing from a judgment of contempt of court for her failure to return a house to her divorced husband in good condition in violation with the provisions of the divorce decree, could enter a plea for mitigation of punishment by reason of insanity, for the first time on appeal. Adair v. Holden, 222 So. 2d 834, 1969 Miss. LEXIS 1562 (Miss. 1969).

Although the Supreme Court may direct a trial judge to act as facility or agent for the Supreme Court for the purpose of developing evidence as to whether a defendant or his attorneys deliberately waived defendant's right to object to testimony with reference to the search of his automobile, the burden is upon the Supreme Court to determine whether it is satisfied that such a waiver had or had not occurred. Mixon v. Black, 198 So. 2d 213, 1967 Miss. LEXIS 1247 (Miss. 1967).

When matters are to be presented to the Supreme Court in the form of evidence, as permitted by this section, it is better practice for appellee for file a plea in bar. Insured Sav. & Loan Asso. v. State, 242 Miss. 547, 135 So. 2d 703, 1961 Miss. LEXIS 592 (Miss. 1961).

Supreme Court will receive affidavits; and determine whether title to judgment on which appealing execution creditor relies has been transferred to third person. McInnis v. Simmons, 162 Miss. 606, 139 So. 872, 1932 Miss. LEXIS 162 (Miss. 1932).

Motion to dismiss plaintiff's appeal because he accepted payment of the judgment pending appeal must be dismissed, the proper way of raising the question being by plea in bar, supported by proper evidence. Adams v. Carter, 92 Miss. 578, 46 So. 59, 1908 Miss. LEXIS 201 (Miss. 1908).

A plea in bar of an appeal based on the statute of limitations may be filed in and passed upon by the Supreme Court. Farmer v. Allen, 85 Miss. 672, 38 So. 38, 1904 Miss. LEXIS 181 (Miss. 1904).

Where the court of original jurisdiction rendered a judgment on the merits of a case on specific grounds, declining to pass on other grounds duly presented, the Supreme Court may, nevertheless, affirm on the grounds not passed on. Yazoo & M. V. R. Co. v. Adams, 81 Miss. 90, 32 So. 937, 1902 Miss. LEXIS 132 (Miss. 1902).

The Supreme Court has no jurisdiction to try a claimant's issue for property seized under execution from it, since the court has no power to try any issue of fact not necessary to be decided for the disposition of a pending appeal. The remedy is replevin. State v. Booker, 61 Miss. 16, 1883 Miss. LEXIS 62 (Miss. 1883).

2. Specific issues of fact.

There are practical and institutional limitations upon the Supreme Court's ability to find facts; consequently, much deference is placed upon the trial judge's full discharge of his or her responsibility to make findings of fact as to the question of whether Miranda rights have been intelligently, knowing and voluntarily waived. However, when the trial judge fails to make specific findings and only makes general findings thereby allowing admissibility of evidence, the Supreme Court's scope of review is considerably broader particularly when the trial judge's findings on the precise points at issue on appeal are not clearly inferable from the findings made. McCarty v. State, 554 So. 2d 909, 1989 Miss. LEXIS 499 (Miss. 1989).

This section [Code 1942 § 1960] does not apply to a case where no appeal has been perfected, for under its terms the issues of fact which the Supreme Court may try are limited to those arising out of the appeal. Windom v. State, 192 So. 2d 689, 1966 Miss. LEXIS 1263 (Miss. 1966).

On appeal of a libel action where the lower court's findings as to malice were not clear, the Supreme Court had authority under this section [Code 1942 § 1960] and its rules to require the trial judge who heard the case on the merits and sitting without a jury to supplement his findings of fact with specific findings on the issue of malice, and as to whether the proof of malice was made to the extent and in the manner required by decisions of the federal courts. Reaves v. Foster, 191 So. 2d 423, 1966 Miss. LEXIS 1217 (Miss. 1966).

The jurisdiction of the Supreme Court under this section [Code 1942 § 1960] is limited to the trial of issues of fact which may arise out of any appeal before it and necessary to the disposition thereof, and consequently does not permit issuance by the clerk of the trial court of a writ of garnishment to collect costs incurred on appeal to the Supreme Court. State v. Keeton, 176 Miss. 590, 169 So. 760, 1936 Miss. LEXIS 143 (Miss. 1936).

§ 9-3-39. Court may make and enforce rules.

The Supreme Court shall have power to make such rules in respect to making out records for said court and for the Court of Appeals as may be expedient, and may prescribe the form and manner in which records shall be prepared for appeal, and cause the same to be bound, but shall not require any record to be printed; and may enforce its rules by proper fines or by refusal to allow costs to be taxed to the clerks below on records not made out according to the rules, or by refusing to permit such records to be filed. And the court may prescribe the mode of pleading in causes therein, civil and criminal, and the manner of trying the same; and may also establish such rules of practice and proceedings therein as may be deemed necessary and proper for certainty and dispatch of business, and may dismiss causes for noncompliance with any of the rules; but such rules must be consistent with law.

HISTORY: Codes, Hutchinson's 1848, ch. 55, art. 4; 1857, ch. 63, art. 24; 1871, § 426; 1880, § 1408; 1892, § 4348; 1906, § 4914; Hemingway's 1917, § 3190; 1930, § 3377; 1942, § 1961; Laws, 1993, ch. 518, § 21, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — For current set of court rules made under authority of this section and Mississippi Constitution, as well as procedures related to tracking system adopted by Supreme Court for all civil and criminal cases, see Miss. R. App. P. 1 et seq.

Provision that local rules shall be filed with Supreme Court, which shall publish and disseminate them, see Miss. R. Civ. P. 83.

JUDICIAL DECISIONS

ANALYSIS

1. Transcript of record in general.
2. —Form and contents.
3. —Agreed transcript.
4. —Transcript fee.
5. Assignment of errors.
6. Briefs.
7. Agreement of counsel.
8. Docketing and hearing of causes.
9. —Original papers — when considered.
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1. Transcript of record in general.

The authority of the Supreme Court to promulgate rules of procedure in aid of its appellate jurisdiction includes the power to issue writs of certiorari to court reporters requiring the preparation and filing of transcripts of testimony in cases appealed to the court. Supreme Court Rule 44 is adopted in order to establish a uniform procedure with reference to requests by court reporters for additional time in which to transcribe their notes. Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

When return day has passed without clerk of trial court filing record, failure of appellant to apply for writ of certiorari is negligent. Yazoo & M. V. R. Co. v. McGraw, 118 Miss. 850, 80 So. 331, 1918 Miss. LEXIS 137 (Miss. 1918).

Recitals of jurisdictional fact in judgment are controlled by record on appeal. Hattiesburg Hardware Co. v. Pittsburg Steel Co., 115 Miss. 663, 76 So. 570, 1917 Miss. LEXIS 247 (Miss. 1917).

2. —Form and contents.

Use of loose-leaf binders was not a compliance with Supreme Court rule requiring transcript of record to be bound in "non-flexible pasteboard covers, with marbled sides." Davis v. Rosenthal Plywood Sales Co., 207 Miss. 574, 42 So. 2d 750, 1949 Miss. LEXIS 368 (Miss. 1949).

Though the trial judge may require court reporter to take all voir dire examinations, it is sufficient that reporter be required to take questions and answers to which objections are made in course of voir dire. Phenizee v. State, 180 Miss. 746, 178 So. 579, 1938 Miss. LEXIS 39 (Miss. 1938).

Where record shows questions but not what answers of witness would have been, exclusion of such testimony cannot be reviewed. New Orleans & N. E. R. Co. v. Scarlet, 115 Miss. 285, 76 So. 265, 1917 Miss. LEXIS 210 (Miss. 1917), rev'd, 249 U.S. 528, 39 S. Ct. 369, 63 L. Ed. 752, 1919 U.S. LEXIS 2071 (U.S. 1919).

Under Supreme Court rule 2 (59 So VII) clerk making up transcript need not include copies of his endorsement of filing on papers and records deposited with him. Mississippi C. R. Co. v. Chambers, 103 Miss. 400, 60 So. 562, 1912 Miss. LEXIS 184 (Miss. 1912), overruled, Richmond v. Enochs, 109 Miss. 14, 67 So. 649, 1915 Miss. LEXIS 108 (Miss. 1915).

Where record not double spaced, case will be remanded to docket for writ of certiorari to clerk of lower court to send up proper transcript. Howell v. State, 103 Miss. 520, 60 So. 135, 1912 Miss. LEXIS 155 (Miss. 1912).

3. —Agreed transcript.

Court rule held not to authorize counsel to make whole or any part of original record of trial court record on appeal. Austin v. Von Seutter, 170 Miss. 467, 151 So. 563, 1934 Miss. LEXIS 87 (Miss. 1934).

4. —Transcript fee.

Motion to retax costs was dismissed where certificate alleging that costs paid were excessive was made by mother-in-law of attorney who filed motion and who was to receive as compensation one-half of amount collected, since mother-in-law was not "disinterested person" within court rule requiring certificate to be made by disinterested person (Supreme Court Rule 21A). Deer Island Fish & Oyster Co. v. First Nat'l Bank, 172 Miss. 284, 159 So. 656, 1935 Miss. LEXIS 129 (Miss. 1935).

Lower court clerk having acted on agreement of counsel that original exhibits be certified to Supreme Court in lieu of transcript thereof, after he had made copies of exhibits, though not required to act on such agreement, clerk was not entitled to fees he would have earned by filing transcript. Austin v. Von Seutter, 170 Miss. 467, 151 So. 563, 1934 Miss. LEXIS 87 (Miss. 1934).

Motion to retax costs in Supreme Court on account of incorrect number of words in instrument, or transcript thereof, or transcript of entire record, must be accompanied by written statement of true number of words with certificate of its correctness by competent disinterested person. Peck & Hills Furniture Co. v. Greer, 166 Miss. 249, 148 So. 387 (Miss. 1933).

Clerk failing to incorporate bill of lading in evidence without excuse not allowed fees for making transcript. Jordan v. Mississippi C. R. Co., 107 Miss. 323, 65 So. 276, 1914 Miss. LEXIS 85 (Miss. 1914).

5. Assignment of errors.

On appeal from a conviction for the sale of LSD, the wrongful refusal of the state to disclose the identity of the confidential informant, although not directly assigned as error, was apparent from the briefs and the record and therefore noticeable as plain error under Rule 6. Hemphill v. State, 313 So. 2d 25, 1975 Miss. LEXIS 1665 (Miss. 1975).

The Supreme Court on its own motion will raise question of absence of necessary parties. Robbins v. Berry, 209 Miss. 422, 47 So. 2d 846, 1950 Miss. LEXIS 407 (Miss. 1950).

Assignments of error not argued in appellants' brief are waived. Vail v. Jackson, 206 Miss. 299, 40 So. 2d 151, 41 So. 2d 357 (1949); McGee v. State, 40 So. 2d 160 (Miss.), cert. denied, 338 U.S. 805, 70 S. Ct. 77, 94 L. Ed. 487, 1949 U.S. LEXIS 1886 (U.S. 1949).

Supreme Court must accept version of incident given by appellee in civil case and accepted by jury when on appeal appellants do not assign as error that verdict of jury was against weight of evidence. Milner Hotels, Inc. v. Brent, 207 Miss. 892, 43 So. 2d 654, 1949 Miss. LEXIS 400 (Miss. 1949).

Case will not be reversed for error unless such error is prejudicial to defendant and is embraced in an assignment of error. McGee v. State, 40 So. 2d 160 (Miss.), cert. denied, 338 U.S. 805, 70 S. Ct. 77, 94 L. Ed. 487, 1949 U.S. LEXIS 1886 (U.S. 1949).

In suit for partition of real property, Supreme Court will not pass upon question of size of complainant's proportionate interest in the property when lower court's failure to adjudicate question is not assigned as error, under rule 6. Dantone v. Dantone, 205 Miss. 420, 38 So. 2d 908, 1949 Miss. LEXIS 439 (Miss. 1949).

In action against town for damages to land caused by defective sewage tank, landowners held not precluded from challenging propriety of directed verdict for defendant, although instruction was not excepted to nor motion for new trial made assigning as ground giving of the instruction, in view of statute and court rule making such action unnecessary. Hodges v. Drew, 172 Miss. 668, 159 So. 298, 1935 Miss. LEXIS 112 (Miss. 1935).

Error in admitting evidence may be presented, though question was not included in motion for new trial. Deposit Guaranty Bank & Trust Co. v. Silver Saver Stores, Inc., 166 Miss. 882, 148 So. 367, 1933 Miss. LEXIS 387 (Miss. 1933).

Error in decree not complained of on appeal therefrom cannot be considered on motion to correct reviewing court's judgment. Nickey v. State, 167 Miss. 650, 145 So. 630, 146 So. 859, 147 So. 324, 1933 Miss. LEXIS 81 (Miss. 1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323, 1934 U.S. LEXIS 718 (U.S. 1934).

Alleged error in calculation and statement in court below of amount due by appellants could not be rectified on motion to correct reviewing court's judgment where not separately and particularly assigned. Nickey v. State, 167 Miss. 650, 145 So. 630, 146 So. 859, 147 So. 324, 1933 Miss. LEXIS 81 (Miss. 1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323, 1934 U.S. LEXIS 718 (U.S. 1934).

Under rule 6, the test of Supreme Court's right to review ruling of trial court is whether it could be assigned for error. Aetna Ins. Co. v. Robertson, 131 Miss. 343, 94 So. 7, 1922 Miss. LEXIS 263 (Miss. 1922), writ of error dismissed, 263 U.S. 673, 44 S. Ct. 5, 68 L. Ed. 500, 1923 U.S. LEXIS 2833 (U.S. 1923), cert. denied, 263 U.S. 698, 44 S. Ct. 5, 68 L. Ed. 512, 1923 U.S. LEXIS 2968 (U.S. 1923).

Where controversy appears to be between appellants and a county and appellees are not interested, cause will be retained to permit appellants to file assignments of error raising point and serving copy on attorney-general, and time will be given to file briefs and replies. McCaleb v. McCaleb, 110 Miss. 486, 70 So. 563, 1915 Miss. LEXIS 62 (Miss. 1915), modified, 113 Miss. 337, 74 So. 275, 1917 Miss. LEXIS 106 (Miss. 1917).

6. Briefs.

Absent a showing by the appellee that the abstract or abridgment prepared by the appellant is defective or insufficient, the appellee is not permitted to file a counter abstract or abridgment, as such duplication would defeat the purposes for which Rule 41 was adopted. Litton Systems, Inc. v. Burrows, 321 So. 2d 297, 1975 Miss. LEXIS 1525 (Miss. 1975).

Abstract of record which referred to certain pages of the voir dire examination and instructions submitted to the trial court, and to three volumes of the record in their entirety, did not comply with Rule 41. Stevenson v. State, 312 So. 2d 10, 1975 Miss. LEXIS 1636 (Miss. 1975).

Where the appendix to the appellant's brief was clearly an attempt to extend the 75 page limitation placed on appellants' briefs, the appendix was removed from the file and returned to the appellant. Stevenson v. State, 312 So. 2d 10, 1975 Miss. LEXIS 1636 (Miss. 1975).

McGee v. State, 40 So. 2d 160 (Miss.), cert. denied, 338 U.S. 805, 70 S. Ct. 77, 94 L. Ed. 487, 1949 U.S. LEXIS 1886 (U.S. 1949).

When counsel for appellant complies with rule 7, paragraph 2, of Supreme Court, requesting that a concise statement of the case precede the argument of counsel, and counsel for appellee neither challenges his statement of facts of the case nor sets forth in his brief a different statement of facts, appellee has no just cause of complaint if the Supreme Court accepts the appellant's statement of facts as being true. Frederic v. Board of Sup'rs, 197 Miss. 293, 20 So. 2d 92, 1944 Miss. LEXIS 300 (Miss. 1944).

Briefs should be confined to facts and law and should not contain opinions counsel may entertain of each other. Felder v. Acme Mills, 112 Miss. 322, 73 So. 52, 1916 Miss. LEXIS 113 (Miss. 1916).

Party excepting to questions of fact in administratix's account should set forth each exception in his brief with reasons why it sould be sustained and citation to pages of record containing evidence as to items excepted to. Davis v. Blumenberg, 107 Miss. 432, 65 So. 503, 1914 Miss. LEXIS 102 (Miss. 1914).

Supreme Court Rule 7 par. 3 as to double spacing applies both to original matter and quotations, and where single spaced brief filed it will be remanded with leave to file new brief within one week. Bank of Roxie v. Lampton, 103 Miss. 398, 60 So. 561, 1912 Miss. LEXIS 183 (Miss. 1912).

Case remanded to docket with leave to file new brief where appellant's brief is partly in black and partly in red ink in violation of rule 7 par. City of Water Valley v. State, 103 Miss. 314, 60 So. 325, 1912 Miss. LEXIS 175 (Miss. 1912).

Case remanded to docket with leave to file another brief where attorney has his name, profession, and address printed in large letters in middle of each page of brief contrary to rule 7 par. 3. Grace v. Floyd, 103 Miss. 201, 60 So. 135, 1912 Miss. LEXIS 154 (Miss. 1912).

7. Agreement of counsel.

Disputed oral agreement of counsel not regarded as excuse for delay in not filing appeal within time by law. Rule 22, 72 So. VIII. Williams v. Meredian L. & R. Co., 114 Miss. 73, 75 So. 59, 1917 Miss. LEXIS 26 (Miss. 1917).

8. Docketing and hearing of causes.

Appeal from judgment of circuit court upholding reasonableness of ordinance extending city limits, where appeal bond was filed by one objector on the 22nd of March and the other on the 24th of March, is returnable on the 1st day of May. Vail v. City of Jackson, 206 Miss. 299, 40 So. 2d 151, 1949 Miss. LEXIS 263 (Miss. 1949).

Cause is on docket for trial the Monday first after expiration of 20 days from taking appeal. Rule of court fixing time of hearing criminal docket is within power of court and consistent with law, being necessary to enable court to properly handle the business before it. Bennett v. State, 99 Miss. 644, 55 So. 482, 1911 Miss. LEXIS 235 (Miss. 1911).

All criminal cases on docket ready for hearing on day of term fixed will be tried. Other criminal cases placed on docket after that time will be continued. Bennett v. State, 99 Miss. 644, 55 So. 482, 1911 Miss. LEXIS 235 (Miss. 1911).

Case of public importance to county from which it comes may be advanced on docket whether preference case or not. Weston v. Hancock County, 98 Miss. 800, 54 So. 307, 1910 Miss. LEXIS 126 (Miss. 1910).

9. —Original papers — when considered.

Where there appeared to be no reason why original exhibits sent to Supreme Court by order of trial court could not have been copied in record, such exhibits were stricken from record and returned to clerk of lower court. Spitchley v. Covington, 181 Miss. 678, 177 So. 31, 1937 Miss. LEXIS 133 (Miss. 1937).

Original exhibits should be sent to Supreme Court only when an inspection of them instead of copies thereof would aid court in determining matter before it. Spitchley v. Covington, 181 Miss. 678, 177 So. 31, 1937 Miss. LEXIS 133 (Miss. 1937).

The court rule relating to sending of original papers to Supreme Court does not authorize trial court generally to send up all documentary exhibits to Supreme Court. Spitchley v. Covington, 181 Miss. 678, 177 So. 31, 1937 Miss. LEXIS 133 (Miss. 1937).

An original paper introduced as evidence on trial could be made part of record on appeal only pursuant to court rule providing for judge or chancellor making necessary order in proper case. Sovereign Camp, W. O. W., v. Duncan, 175 Miss. 724, 165 So. 546, 1936 Miss. LEXIS 2 (Miss. 1936).

An original paper introduced as evidence on trial could be made part of record on appeal only pursuant to court rule providing for judge or chancellor making necessary order in proper case, and such relief could not be granted on motion for certiorari to bring up such paper and have it made part of record on appeal. Sovereign Camp, W. O. W., v. Duncan, 175 Miss. 724, 165 So. 546, 1936 Miss. LEXIS 2 (Miss. 1936).

Lower court clerk having acted on agreement of counsel that original exhibits be certified to Supreme Court in lieu of transcript thereof, after he had made copies of exhibits, though not required to act on such agreement, clerk was not entitled to fees he would have earned by filing transcript. Austin v. Von Seutter, 170 Miss. 467, 151 So. 563, 1934 Miss. LEXIS 87 (Miss. 1934).

Original of papers constituting part of record in trial court may be sent up to Supreme Court on appeal only when Supreme Court, trial judge, or chancellor makes order therefor. Austin v. Von Seutter, 170 Miss. 467, 151 So. 563, 1934 Miss. LEXIS 87 (Miss. 1934).

The order and recitals thereof in the judge's order sending original papers up for inspection under Supreme Court rule 28 are not considered as evidence in the record, and the court will limit its consideration to the instructions and verdict without reference to recitals in the order. Gulf Coast Stevedoring Co. v. Gibbs, 124 Miss. 188, 86 So. 582, 1920 Miss. LEXIS 484 (Miss. 1920).

10. —Harmless error — no reversal.

Under Rule 11 of Supreme Court, no judgment shall be reversed on ground of misdirection to jury, or improper admission or exclusion of evidence, or for error as to matter of pleading or procedure, unless it shall affirmatively appear from whole record that such judgment has resulted in miscarriage of justice. Summerall v. State, 206 Miss. 878, 41 So. 2d 51, 1949 Miss. LEXIS 310 (Miss. 1949).

Judgment of conviction of grand larceny will not be reversed on ground of misdirection to jury or other errors which are harmless in face of testimony in record and when judgment of court below is not miscarriage of justice. Countryman v. State, 204 Miss. 117, 37 So. 2d 21, 1948 Miss. LEXIS 349 (Miss. 1948).

Supreme Court will not reverse, unless record discloses that trial court erred in making ruling complained of, and that appellant was materially prejudiced thereby. Lewis v. State, 173 Miss. 821, 163 So. 387, 1935 Miss. LEXIS 252 (Miss. 1935).

Where insured's demurrer to special plea was erroneously sustained, question whether insurer had waived defense relied on must be determined by trial court and not by Supreme Court. New York Life Ins. Co. v. Gresham, 170 Miss. 211, 154 So. 547, 1934 Miss. LEXIS 125 (Miss. 1934).

Judgment not reversed for erroneous instruction unless it affirmatively appears that complaining party is prejudiced. Smith v. Shelton, 132 Miss. 118, 95 So. 835, 1923 Miss. LEXIS 25 (Miss. 1923).

Erroneous instruction held harmless. Cecil Lumber Co. v. McLeod, 122 Miss.

767, 85 So. 78, 1920 Miss. LEXIS 475 (Miss. 1920).

Where accused voluntarily absented himself during examination of two jurors one of whom was accepted, error, if any, in proceeding with trial was harmless. Thomas v. State, 117 Miss. 532, 78 So. 147, 1918 Miss. LEXIS 170 (Miss. 1918).

11. New trial.

On appeal of a libel action where the lower court's findings as to malice were not clear, the Supreme Court had authority under this section [Code 1942 § 1961] and its rules to require the trial judge who heard the case on the merits and sitting without a jury to supplement his findings of fact with specific findings on the issue of malice, and as to whether the proof of malice was made to the extent and in the manner required by decisions of the federal courts. Reaves v. Foster, 191 So. 2d 423, 1966 Miss. LEXIS 1217 (Miss. 1966).

Although Supreme Court's order is one of reversal and remand, its opinion is to be regarded as law of case on any similar facts or issues upon rehearing in trial court. State Highway Com. v. Coahoma County, 203 Miss. 629, 32 So. 2d 555, 1947 Miss. LEXIS 367 (Miss. 1947).

Where judgment for plaintiff was reversed in part and Supreme Court rendered judgment trial court should have rendered, defendant was "successful party" entitled to full costs on appeal. Aetna Life Ins. Co. v. Thomas, 166 Miss. 53, 144 So. 50, 1932 Miss. LEXIS 306 (Miss. 1932).

The purpose of rule 6 of the rules of the Supreme Court is to dispense with the necessity for a motion for new trial when the error assigned is based upon any ruling made in the trial, but in the absence of error in any of the rulings of the trial court, the rule in question does not dispense with the necessity for a motion for a new trial when the assignment of error is based solely upon objection to the amount of the verdict. Coccora v. Vicksburg Light & Traction Co., 126 Miss. 713, 89 So. 257, 1921 Miss. LEXIS 68 (Miss. 1921).

Where cause reversed solely on measure of damages but remanded generally, motion to correct judgment so as to remand for trial as to damages only will be sustained. Yazoo & M. V. R. Co. v. Boon, 112 Miss. 493, 73 So. 563, 1916 Miss. LEXIS 134 (Miss. 1916).

Supreme Court may award new trial on issue of damages only. Yazoo & M. V. R. Co. v. Scott, 108 Miss. 871, 67 So. 491, 1914 Miss. LEXIS 287 (Miss. 1914).

12. Suggestion of error.

Where on the original submission to a quorum of the judges elaborate briefs had been submitted by both sides, and on suggestion of error reply briefs were requested and filed, and the matter was considered en banc, the Supreme Court would not grant authority to file a second suggestion of error. Carter v. Berry, 243 Miss. 378, 142 So. 2d 13 (Miss. 1962).

On suggestion of error in affirmance of conviction for murder, crucial test is not whether original opinion of supreme court may have contained erroneous statement or conclusion of law, but whether such error was committed in trial court. Dickins v. State, 208 Miss. 69, 43 So. 2d 366, 1949 Miss. LEXIS 409 (Miss. 1949).

Supreme Court is compelled to limit its examination to record before it on suggestion of error in affirmance of judgment of murder conviction and cannot consider assurances of innocence of defendant which derive not from record but from independent investigation of counsel. McAfee v. State, 41 So. 2d 43 (Miss. 1949).

Second suggestion of errors filed after expiration of time for filing suggestion of errors, without permission, and in violation of Rule 14 of Supreme Court, is no part of record. Ball v. State, 203 Miss. 521, 36 So. 2d 159, 1948 Miss. LEXIS 300 (Miss. 1948).

A suggestion of error under rule 14 is to all intents and purposes a request for rehearing, and may be filed without an order of the court if done within the original fifteen days allowed, or within the extended time granted by order of the court therefor; and in such event it suspends the judgment and also the effect and operation of any mandate issued thereon until the suggestion of error shall have been disposed of. White v. State, 190 Miss. 589, 195 So. 479, 1940 Miss. LEXIS 173 (Miss. 1940).

The proper construction of the statute relating to certifying final judgments to the court below (Code 1942 § 1990) requires the clerk of the Supreme Court to certify a final judgment of decree within twenty days after any suggestion of error shall have been disposed of, or, if none has been filed, that he then certify the judgment and issue the mandate, within the period so prescribed, after the time allowed under the rule for filing a suggestion of error, or the extended time granted under an order of the court for that purpose, shall have expired. White v. State, 190 Miss. 589, 195 So. 479, 1940 Miss. LEXIS 173 (Miss. 1940).

The Supreme Court was not divested of jurisdiction to hear a manslaughter case on suggestion of error after mandate was issued to and received by the court below upon reversal of the case by a division of the Supreme Court, where within the fifteen days allowed for filing such suggestion of error, an extension of time was granted so as to allow thirty days for filing the same, as shown by an order duly entered upon the minutes of the court prior to the expiration of the original fifteen days allowed, notwithstanding that no order was entered in the Supreme Court, nor notice given to the court below, recalling such mandate at any time prior thereto. White v. State, 190 Miss. 589, 195 So. 479, 1940 Miss. LEXIS 173 (Miss. 1940).

Year within which municipal bonds might be issued after favorable determination of litigation did not begin to run until issuance of mandate fifteen days after Supreme Court's decision, which was time allowed for filing of suggestion of error. Love v. Mayor & Board of Aldermen, 166 Miss. 322, 148 So. 382, 1933 Miss. LEXIS 389 (Miss. 1933).

Suggestion of error not filed until long after time for filing thereof had expired should be dismissed. Aetna Life Ins. Co. v. Thomas, 166 Miss. 53, 144 So. 50, 1932 Miss. LEXIS 306 (Miss. 1932).

Motion to change award of costs must be filed in time allowed for filing suggestion of error. Bacot v. Holloway, 140 Miss. 120, 104 So. 696, 1925 Miss. LEXIS 240 (Miss. 1925).

Motion to correct judgment of remand filed after adjournment and more than 15 days after rendition, not predicated on mistake nor grounds contained in Code 1906 § 1016, is a suggestion of error and must be overruled as not filed within time fixed. Rule 14, 72 So. VIII. McCrory v. Donald, 118 Miss. 596, 79 So. 801, 1918 Miss. LEXIS 101 (Miss. 1918).

13. Motions.

Supreme Court rule 16 is amended to require that all motions to strike the court reporter's notes for failure to give notice to court reporter as required by the provisions of Code 1972 § 9-13-33 [Repealed] shall be filed not later than 10 days after the record in the cause is filed in Supreme Court. Sossaman v. State, 308 So. 2d 222, 1975 Miss. LEXIS 1851 (Miss. 1975).

Supreme Court may overrule motion to dismiss appeal when record has not been filed at time motion is made but is filed few days later and prior to order on motion without impairment of general provisions of Code 1942, § 1966, or Rules of Court, where circumstances are not ordinary and advancement of justice requires that court relax its rules. Van Norman v. Van Norman, 45 So. 2d 847 (Miss. 1950).

Motion to expunge parts of record dismissed where no brief filed or counsel appeared as required by rule 16 (59 So IX) when motions called for hearing. Goehns v. Wallace, 108 Miss. 489, 66 So. 978, 1914 Miss. LEXIS 226 (Miss. 1914).

Compliance with rule 16 as to notice to opposite party may be shown by proper certificate signed; unsigned memorandum, not sufficient and motion to continue remanded to docket on failure to comply with rule. Germain v. Harwell, 103 Miss. 521, 60 So. 212, 1912 Miss. LEXIS 164 (Miss. 1912).

14. Mandate, issuance or retention of.

Statute permitting suit in forma pauperis applies only to a court of original jurisdiction and not to courts of appeal; accordingly it does not authorize setting down of a mandate on an affidavit in forma pauperis. Life & Casualty Ins. Co. v. Walters, 190 Miss. 761, 198 So. 746, 200 So. 732, 1940 Miss. LEXIS 183 (Miss. 1940).

Failure of the Supreme Court to recall a mandate issued to and received by the court below after reversal of a manslaughter prosecution by a division of the Supreme Court, pending a hearing on a suggestion of error, prior to judgment of affirmance of the conviction or before the expiration of the term, did not deprive the Supreme Court of power to recall the same, where the court entered an order on its minutes continuing all matters undisposed of to the next succeeding term; and the issuance by the clerk of a mandate under the judgment of affirmance in lieu of the former mandate would be effective ipso facto to revoke and recall the original mandate. White v. State, 190 Miss. 589, 195 So. 479, 1940 Miss. LEXIS 173 (Miss. 1940).

Where costs on appeal, though adjudged against appellee, were paid by appellant after execution against appellee was returned unsatisfied, appellant held not entitled to dismissal of cause or to order directing clerk to refuse payment of costs if tendered by appellee and to decline to issue mandate on ground of appellee's laches in delaying to pay costs; applicability of doctrine of laches being for determination of court below on return of cause. Dubois v. Thomas, 173 Miss. 697, 161 So. 868, 1935 Miss. LEXIS 239 (Miss. 1935).

15. Reinstatement of dismissed causes.

Felony cases dismissed because appellant has escaped and remains a fugitive when the case is called for hearing on the merits may be reinstated only under the provisions of Supreme Court Rule 18. Miller v. State, 311 So. 2d 348, 1975 Miss. LEXIS 1607 (Miss. 1975).

Rule 18, relating to reinstatement of a cause which has been dismissed, has been construed to require a statement, not merely that there is merit in the appeal, but the substance of the ground for which reversal is asked must be set forth, with sufficient facts to show the pertinency of such ground for reversal. Warren v. State, 165 Miss. 783, 144 So. 698, 1932 Miss. LEXIS 293 (Miss. 1932), overruled, Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

16. Divisions of court.

Supreme Court rule authorizing the court to sit in three divisions of three judges each, with each division having full power to hear and to judge all cases assigned to it, was not unconstitutional. In Mississippi Constitution § 149A, authorizing two divisions of three judges each, "two" was surplusage as there were only six judges on the court at the time the section was adopted. Russell v. State, 312 So. 2d 422, 1975 Miss. LEXIS 1641 (Miss. 1975).

Under constitutional provision authorizing Supreme Court to sit in two divisions under such rules and regulations as court might adopt, decision of division of Supreme Court becomes authoritative and binding as to cases thus determined and decided by division of court. Jefferson Standard Life Ins. Co. v. Ham, 178 Miss. 838, 173 So. 672, 1937 Miss. LEXIS 236 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Dismissal of action for failure or refusal of plaintiff to obey court order. 4 A.L.R.2d 348.

Dismissal of state court action for failure or refusal of plaintiff to answer written interrogatories. 56 A.L.R.3d 1109.

Dismissal of state court action for failure or refusal of plaintiff to obey request or order for production of documents or other objects. 27 A.L.R.4th 61.

Dismissal of state court action for failure or refusal of plaintiff to appear or answer questions at deposition or oral examination. 32 A.L.R.4th 212.

Dismissal of state court action for plaintiff's failure or refusal to obey court order relating to pleadings or parties. 3 A.L.R.5th 237.

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 48- 52.

CJS.

21 C.J.S., Courts §§ 171-174.

§§ 9-3-40 and 9-3-41. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-3-40. [En Laws, 1978, ch. 425, § 1]

§ 9-3-41. [Codes, Hutchinson's 1848, ch. 55, art. 3 (1); 1857, ch. 63, art. 18; 1871, § 420; 1880, § 1413; 1892, § 4352; 1906, § 4918; Hemingway's 1917, § 3194; 1930, § 3379; 1942, § 1963; Laws, 1922, ch. 243]

Editor's Notes — Former § 9-3-40 provided for the approval of local court rules by the Supreme Court.

Former § 9-3-41 specified which cases required that opinions be in writing.

§ 9-3-43. Supreme Court decisions; designation of private publication as official reports.

The Supreme Court may declare the published volumes of the decisions of the supreme court, as the same are published by any person, firm or corporation, to be official reports of the decisions of the Supreme Court.

HISTORY: Codes, 1942, § 9029.5; Laws, 1966, ch. 381, § 1, eff from and after July 1, 1966.

§ 9-3-45. Mississippi edition of Supreme Court decisions; purchase; distribution; pricing.

It shall be the duty of the Secretary of State to contract for the purchase of and to purchase not more than four hundred (400) copies of the official Mississippi edition of the decisions of the Supreme Court and advance sheets with headnotes. The Supreme Court shall, when approved by the Chief Justice, certify the account therefor to the State Fiscal Officer, who thereupon shall issue his warrant upon the State Treasury for the amounts so specified. Of these copies, the Secretary of State shall deliver, if so requested, a copy to each circuit judge, each chancellor, each district attorney, and each county attorney, each county judge, each Supreme Court judge, the Attorney General and each assistant, and to all others heretofore or hereafter authorized by law to receive same. Before delivery of the copies, the Secretary of State shall first have stamped thereon as follows: "Property of the State of Mississippi for the use of the ________ Judicial District," and his successors in office; and he shall place an appropriately similar stamp on each copy delivered to the other court officers mentioned in this section.

The contractor shall have exclusive sale of all reports published under this section, including the advance sheets with headnotes, but the contract shall provide that the permanent volumes of the Mississippi Reports shall not sell, within the state, for a greater price than that approved by the Chief Justice. The contractor shall mail directly to each circuit judge, each chancellor, each district attorney, and each county attorney the advance sheets at the same time they are mailed out to other subscribers within the state.

HISTORY: Codes, 1942, § 9029.7; Laws, 1966, ch. 396, § 1; Laws, 1968, ch. 506, § 23; Laws, 2002, ch. 351, § 1, eff from and after July 1, 2002.

Editor's Notes — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§§ 9-3-47 and 9-3-49. Repealed.

Repealed by Laws, 1990, ch. 363, § 3 eff from and after December 31, 1995.

§ 9-3-47. [En Laws, 1990, ch. 363, § 1]
§ 9-3-49. [En Laws, 1990, ch. 363, § 2]

Editor's Notes — Former § 9-3-47 related to the appointment of magistrates from Supreme Court districts to assist the Supreme Court.

Former § 9-3-49 related to the duty of the Supreme Court Clerk to maintain statistics concerning former § 9-3-47.

RULE-MAKING

Sec.	
9-3-61.	General rule-making power vested in Supreme Court.
9-3-63.	Limitation on rules.
9-3-65.	Advisory committee on Rules of Civil Practice and Procedure; membership; terms.
9-3-67.	Advisory committee on Rules of Civil Practice and Procedure; chairman; research counsel; expenses.
9-3-69.	Advisory committee on Rules of Civil Practice and Procedure; duties.
9-3-70.	Repealed.
9-3-71 and 9-3-73.	Repealed.

§ 9-3-61. General rule-making power vested in Supreme Court.

As a part of the judicial power granted in Article 6, Section 144, of the Mississippi Constitution of 1890, the Supreme Court has the power to prescribe from time to time by general rules the forms of process, writs, pleadings, motions, rules of evidence and the practice and procedure for trials and appeals in the Court of Appeals and in the circuit, chancery and county courts of this state and for appeals to the Supreme Court from interlocutory or final orders of trial courts and administrative boards and agencies, and certiorari from the Court of Appeals.

HISTORY: Laws, 1975, ch. 501, § 15; Laws, 1982, ch. 321, § 1; Laws, 1993, ch. 518, § 22; Laws, 1996, ch. 384, § 1, eff from and after July 1, 1996.

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of

1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Power of the court to prescribe rules for the development of records control schedules for the courts of the state, see § 25-59-17.

RESEARCH REFERENCES

ALR.

Propriety of exclusion of press or other media representatives from civil trial. 39 A.L.R.5th 103.

Law Reviews.

1981 Mississippi Supreme Court Review: Civil Procedure. 52 Miss. L. J. 399, June 1982.

The Limits of the Mississippi Supreme Court's Rule-Making Authority. 60 Miss. L. J. 359, Fall 1990.

1982 Mississippi Supreme Court Review: Civil Procedure: Judicial Decisions. 53 Miss L. J. 130, March 1983.

Recent Trends in Mississippi Judicial Rule Making: Court Power, Judicial Recusals, and Expert Testimony, 23 Miss. C. L. Rev. 1, Fall, 2003.

§ 9-3-63. Limitation on rules.

Rules prescribed by the Supreme Court shall preserve the right of trial by jury as at common law and as declared by Article 3, Section 31 of the Mississippi Constitution of 1890 and as declared by Amendment VII to the Constitution of the United States.

HISTORY: Laws, 1975, ch. 501, § 16; Laws, 1996, ch. 384, § 2, eff from and after July 1, 1996.

RESEARCH REFERENCES

Law Reviews.

The Limits of the Mississippi Supreme Court's Rule-Making Authority. 60 Miss. L. J. 359, Fall 1990.

§ 9-3-65. Advisory committee on Rules of Civil Practice and Procedure; membership; terms.

(1) There shall be an advisory committee on rules which shall consist of (a) two (2) members selected by the judges of the Court of Appeals; (b) two (2) members selected by the Conference of Circuit Court Judges; (c) two (2) members selected by the Conference of Chancery Court Judges; (d) two (2) members selected by the Conference of County Court Judges; (e) two (2) members selected by the Mississippi Bar; (f) two (2) members selected by the Magnolia Bar Association; (g) two (2) members selected by the Mississippi Trial Lawyers Association; (h) two (2) members selected by the Mississippi Defense Lawyers Association; (i) two (2) members selected by the Mississippi Prosecutors Association; (j) two (2) members selected by the Mississippi Public Defenders Association; (k) the Dean of the University of Mississippi School of Law, or his designee; and (l) the Dean of the Mississippi College School of Law, or his designee.

(2) All members of the advisory committee shall serve for terms of three (3) years provided that the committee at its discretion may divide its membership so that approximately one-third (⅓) of its members' terms will expire each year and may modify the terms of such of its members as may be necessary to accomplish this end. Such selections and appointments shall be made by the respective appointing authorities. Vacancies on the advisory committee shall be filled by the respective selecting and appointing authorities. Members of the committee shall be eligible for reappointment.

HISTORY: Laws, 1975, ch. 501, § 17; Laws, 1996, ch. 384, § 3, eff from and after July 1, 1996.

§ 9-3-67. Advisory committee on Rules of Civil Practice and Procedure; chairman; research counsel; expenses.

The Advisory Committee on Rules shall select a chairman and a vice-chairman from among its members and shall provide for its method of operation. The committee shall have the authority to employ and compensate a competent person or persons to serve as research counsel for the advisory committee who shall serve at the pleasure of the committee either in a full-time or part-time capacity. The committee shall have the authority to employ reporters to direct such projects as it may undertake and to compensate such reporters as may be appropriate. In addition, the committee shall have the authority to employ and compensate such assistants to and staff for the research counsel and the reporters, and to employ and compensate such other persons as the committee may from time to time deem necessary or advisable to discharge the duties with which the committee is herein charged. Reasonable actual expenses of food, lodging and transportation incurred by members of the committee in the performance of their duties shall be reimbursed.

HISTORY: Laws, 1975, ch. 501, § 18; Laws, 1996, ch. 384, § 4, eff from and after July 1, 1996.

§ 9-3-69. Advisory committee on Rules of Civil Practice and Procedure; duties.

The advisory committee shall make a comprehensive and continuing study of practice and procedure in the trial and appellate courts of this state; shall draft such rules pertaining thereunto as it concludes will simplify, improve and expedite the administration of justice; shall publicize the terms and provisions of the proposed rules and shall receive and consider suggestions from the bench, the bar and the public for their improvement; and shall recommend and submit a final draft of any proposed rules to the supreme court, which may amend, revise, delete or add to the recommended rules as it concludes will best serve the administration of justice.

HISTORY: Laws, 1975, ch. 501, § 19; Laws, 1996, ch. 384, § 5, eff from and after July 1, 1996.

§ 9-3-70. Repealed.

Repealed by Laws, 1998, ch. 342, § 1, eff from and after passage (approved March 16, 1998).

§ 9-3-70. [Laws, 1996, ch. 384, § 6, eff from and after July 1, 1996]

Editor's Notes — Former Section 9-3-70 related to review of proposed new rules and rule changes by the Advisory Committee on Rules.

§§ 9-3-71 and 9-3-73. Repealed.

Repealed by Laws, 1996, ch. 384, § 7, eff from and after July 1, 1996.

§ 9-3-71. [Laws, 1975, ch. 501, § 20; Laws, 1982, ch. 321, § 2]

§ 9-3-73. [Laws, 1975, ch. 501, § 21]

Editor's Notes — Former § 9-3-71 was entitled: Submission of proposed rules to legislature; when effective; legislative disapproval; rules not submitted of no effect.

Former § 9-3-73 was entitled: Conflicts of proposed rules and Code of 1972 to be specifically noted.

CHAPTER 4.

COURT OF APPEALS OF THE STATE OF MISSISSIPPI

Sec.
9-4-1. Establishment of Court of Appeals.
9-4-3. Jurisdiction of court; issuance of decisions.
9-4-5. Selection of judges of court; qualifications; terms of office; Court of Appeals Districts.
9-4-7. Structure and personnel of court.
9-4-9. Quorum of court; assignment of judges to panels; presiding judge of panel.
9-4-11. Location of court.
9-4-13. Salaries of court and its personnel.
9-4-15. Time for holding elections for office of judge of Court of Appeals.
9-4-17. Severability clause.

§ 9-4-1. Establishment of Court of Appeals.

(1) There is hereby established a court to be known as the "Court of Appeals of the State of Mississippi," which shall be a court of record.

(2) The Court of Appeals shall be comprised of ten (10) appellate judges, two (2) from each Court of Appeals District, selected in accordance with Section 9-4-5.

HISTORY: Laws, 1993, ch. 518, § 1; Laws, 1994, ch 564, § 97; Laws, 2001, ch. 574, § 1, eff July 30, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws, 1993, ch. 518.

Laws, 1994, ch. 564, § 104, provides as follows:

"SECTION 104. Section 100 of this act shall take effect and be in force from and after January 1, 1995, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended whichever is later and the remainder of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On September 6, 1994, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1994, ch. 564, § 97.

On July 30, 2001, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2001, ch. 574, § 1.

Cross References — Election of judges of Court of Appeals to be as prescribed in this chapter, see § 23-15-994.

For rules governing practice and procedures in appeals to the Court of Appeals of the State of Mississippi, see Miss. R. App. P. 1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Residency requirement.

1. In general.

Sections 9-4-1 through 9-4-17, which establish the Court of Appeals of the State of Mississippi, are constitutional. Marshall v. State, 662 So. 2d 566, 1995 Miss. LEXIS 492 (Miss. 1995).

2. Residency requirement.

As a candidate for judge of the Mississippi Court of Appeals has to reside within the district for the office she seeks, and as appellee did not meet her burden to prove that she met the residency requirement, the trial court erred in finding that she was a qualified candidate for the position. Bryant v. Westbrooks, 99 So. 3d 128, 2012 Miss. LEXIS 462 (Miss. 2012).

Candidate for the office of Court of Appeals of the State of Mississippi must reside within the district for the office she seeks. Bryant v. Westbrooks, 99 So. 3d 128, 2012 Miss. LEXIS 462 (Miss. 2012).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 8- 11.

Law Reviews.

Southwick, The Mississippi Court of Appeals: History, Procedures, and First Year's Jurisprudence. 65 Miss. L. J. 593, Spring 1996.

§ 9-4-3. Jurisdiction of court; issuance of decisions.

(1) The Court of Appeals shall have the power to determine or otherwise dispose of any appeal or other proceeding assigned to it by the Supreme Court.

The jurisdiction of the Court of Appeals is limited to those matters which have been assigned to it by the Supreme Court.

The Supreme Court shall prescribe rules for the assignment of matters to the Court of Appeals. These rules may provide for the selective assignment of individual cases and may provide for the assignment of cases according to subject matter or other general criteria. However, the Supreme Court shall retain appeals in cases imposing the death penalty, or cases involving utility rates, annexations, bond issues, election contests, or a statute held unconstitutional by the lower court.

(2) Decisions of the Court of Appeals are final and are not subject to review by the Supreme Court, except by writ of certiorari. The Supreme Court may grant certiorari review only by the affirmative vote of four (4) of its members. At any time before final decision by the Court of Appeals, the Supreme Court may, by order, transfer to the Supreme Court any case pending before the Court of Appeals.

(3) The Court of Appeals shall have jurisdiction to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition or any other process when this may be necessary in any case assigned to it by the Supreme Court.

(4) The Court of Appeals shall issue a decision in every case heard before the Court of Appeals within two hundred seventy (270) days after the final briefs have been filed with the court.

(5) The Supreme Court shall issue a decision in every case within its

original jurisdiction, including all direct and post-conviction collateral relief appeals or applications in cases imposing the death penalty, within two hundred seventy (270) days after the final briefs have been filed with the court. The Supreme Court shall issue a decision in every case received on certiorari from the Court of Appeals within one hundred eighty (180) days after the final briefs have been filed with the court.

HISTORY: Laws, 1993, ch. 518, § 2; Laws, 1996, ch. 492, § 1; Laws, 1998, ch. 588, § 2, eff from and after July 1, 1998.

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws, 1993, ch. 518.

Cross References — Power of court to punish for contempt, see § 9-1-17.

JUDICIAL DECISIONS

1. In general.

It is within the authority of the Court of Appeals, upon proper referral from the Supreme Court, to grant a motion for a discretionary interlocutory appeal. McGriggs v. Montgomery, 710 So. 2d 886, 1998 Miss. App. LEXIS 192 (Miss. Ct. App. 1998).

There is no rule, statute, or constitutional provision which would limit the state's right to seek certiorari review of a Court of Appeals decision which reverses a criminal conviction and remands for a new trial. Cohen v. State, 732 So. 2d 867, 1998 Miss. LEXIS 623 (Miss. 1998).

While jurisdiction of Court of Appeals is limited solely to those cases assigned to it by Supreme Court, once such an assignment is made, that court considers and disposes of each case not by way of preliminary review but as fully empowered appellate court; except as to those cases which by statute must be retained by Supreme Court, no litigant has right to further review by certiorari. Harris v. State, 704 So. 2d 1286, 1997 Miss. LEXIS 47 (Miss.), cert. denied, 522 U.S. 827, 118 S. Ct. 90, 139 L. Ed. 2d 47, 1997 U.S. LEXIS 4857 (U.S. 1997).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Courts §§ 22, 23, 82.

Law Reviews.

Southwick, The Mississippi Court of Appeals: History, Procedures, and First Year's Jurisprudence. 65 Miss. L. J. 593, Spring 1996.

§ 9-4-5. Selection of judges of court; qualifications; terms of office; Court of Appeals Districts.

(1) The term of office of judges of the Court of Appeals shall be eight (8) years. An election shall be held on the first Tuesday after the first Monday in November 1994, to elect the ten (10) judges of the Court of Appeals, two (2) from each congressional district; provided, however, judges of the Court of

Appeals who are elected to take office after the first Monday of January 2002, shall be elected from the Court of Appeals Districts described in subsection (5) of this section. The judges of the Court of Appeals shall begin service on the first Monday of January 1995.

(2)(a) In order to provide that the offices of not more than a majority of the judges of said court shall become vacant at any one (1) time, the terms of office of six (6) of the judges first to be elected shall expire in less than eight (8) years. For the purpose of all elections of members of the court, each of the ten (10) judges of the Court of Appeals shall be considered a separate office. The two (2) offices in each of the five (5) districts shall be designated Position Number 1 and Position Number 2, and in qualifying for office as a candidate for any office of judge of the Court of Appeals each candidate shall state the position number of the office to which he aspires and the election ballots shall so indicate.

(i) In Congressional District Number 1, the judge of the Court of Appeals for Position Number 1 shall be that office for which the term ends January 1, 1999, and the judge of the Court of Appeals for Position Number 2 shall be that office for which the term ends January 1, 2003.

(ii) In Congressional District Number 2, the judge of the Court of Appeals for Position Number 1 shall be that office for which the term ends on January 1, 2003, and the judge of the Court of Appeals for Position Number 2 shall be that office for which the term ends January 1, 2001.

(iii) In Congressional District Number 3, the judge of the Court of Appeals for Position Number 1 shall be that office for which the term ends on January 1, 2001, and the judge of the Court of Appeals for Position Number 2 shall be that office for which the term ends January 1, 1999.

(iv) In Congressional District Number 4, the judge of the Court of Appeals for Position Number 1 shall be that office for which the term ends on January 1, 1999, and the judge of the Court of Appeals for Position Number 2 shall be that office for which the term ends January 1, 2003.

(v) In Congressional District Number 5, the judge of the Court of Appeals for Position Number 1 shall be that office for which the term ends on January 1, 2003, and the judge of the Court of Appeals for Position Number 2 shall be that office for which the term ends January 1, 2001.

(b) The laws regulating the general elections shall apply to and govern the elections of judges of the Court of Appeals except as otherwise provided in Sections 23-15-974 through 23-15-985.

(c) In the year prior to the expiration of the term of an incumbent, and likewise each eighth year thereafter, an election shall be held in the manner provided in this section in the district from which the incumbent Court of Appeals judge was elected at which there shall be elected a successor to the incumbent, whose term of office shall thereafter begin on the first Monday of January of the year in which the term of the incumbent he succeeds expires.

(3) No person shall be eligible for the office of judge of the Court of Appeals who has not attained the age of thirty (30) years at the time of his election and who has not been a practicing attorney and citizen of the state for five (5) years immediately preceding such election.

(4) Any vacancy on the Court of Appeals shall be filled by appointment of the Governor for that portion of the unexpired term prior to the election to fill the remainder of said term according to provisions of Section 23-15-849, Mississippi Code of 1972.

(5)(a) The State of Mississippi is hereby divided into five (5) Court of Appeals Districts as follows:

FIRST DISTRICT. —The First Court of Appeals District shall be composed of the following counties and portions of counties: Alcorn, Benton, Calhoun, Chickasaw, Choctaw, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union, Webster and Yalobusha; in Grenada County the precincts of Providence, Mt. Nebo, Hardy and Pea Ridge; in Montgomery County the precincts of North Winona, Lodi, Stewart, Nations and Poplar Creek; in Panola County the precincts of East Sardis, South Curtis, Tocowa, Pope, Courtland, Cole's Point, North Springport, South Springport, Eureka, Williamson, East Batesville 4, West Batesville 4, Fern Hill, North Batesville A, East Batesville 5 and West Batesville 5; and in Tallahatchie County the precincts of Teasdale, Enid, Springhill, Charleston Beat 1, Charleston Beat 2, Charleston Beat 3, Paynes, Leverette, Cascilla, Murphreesboro and Rosebloom.

SECOND DISTRICT. —The Second Court of Appeals District shall be composed of the following counties and portions of counties: Bolivar, Carroll, Claiborne, Coahoma, Holmes, Humphreys, Issaquena, Jefferson, Leflore, Quitman, Sharkey, Sunflower, Tunica, Warren, Washington and Yazoo; in Attala County the precincts of Northeast, Hesterville, Possomneck, North Central, McAdams, Newport, Sallis and Southwest; that portion of Grenada County not included in the First Court of Appeals District; in Hinds County Precincts 11, 12, 13, 22, 23, 27, 28, 29, 30, 40, 41, 83, 84 and 85, and the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Cynthia, Edwards, Learned, Pine Haven, Pocahontas, St. Thomas, Tinnin, Utica 1 and Utica 2; in Leake County the precincts of Conway, West Carthage, Wiggins, Thomastown and Ofahoma; in Madison County the precincts of Farmhaven, Canton Precinct 2, Canton Precinct 3, Cameron Street, Canton Precinct 6, Bear Creek, Gluckstadt, Smith School, Magnolia Heights, Flora, Virlilia, Canton Precinct 5, Cameron, Couparle, Camden, Sharon, Canton Precinct 1 and Canton Precinct 4; that portion of Montgomery County not included in the First Court of Appeals District; that portion of Panola County not included in the First Court of Appeals District; and that portion of Tallahatchie County not included in the First Court of Appeals District.

THIRD DISTRICT. —The Third Court of Appeals District shall be composed of the following counties and portions of counties: Clarke, Clay, Jasper, Kemper, Lauderdale, Lowndes, Neshoba, Newton, Noxubee, Oktibbeha, Rankin, Scott, Smith and Winston; that portion of

Attala County not included in the Second Court of Appeals District; in Jones County the precincts of Northwest High School, Shady Grove, Sharon, Erata, Glade, Myrick School, Northeast High School, Rustin, Sandersville Civic Center, Tuckers, Antioch and Landrum; that portion of Leake County not included in the Second Court of Appeals District; that portion of Madison County not included in the Second Court of Appeals District; and in Wayne County the precincts of Big Rock, Yellow Creek, Hiwannee, Diamond, Chaparral, Matherville, Coit and Eucutta.

FOURTH DISTRICT. —The Fourth Court of Appeals District shall be composed of the following counties and portions of counties: Adams, Amite, Copiah, Covington, Franklin, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall and Wilkinson; that portion of Hinds County not included in the Second Court of Appeals District; and that portion of Jones county not included in the Third Court of Appeals District.

FIFTH DISTRICT. —The Fifth Court of Appeals District shall be composed of the following counties and portions of counties: Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Pearl River, Perry and Stone; and that portion of Wayne County not included in the Third Court of Appeals District.

(b) The boundaries of the Court of Appeals Districts described in paragraph (a) of this subsection shall be the boundaries of the counties and precincts listed in paragraph (a) of this subsection as such boundaries existed on October 1, 1990.

HISTORY: Laws, 1993, ch. 518, § 3; Laws, 1994, ch. 340, § 1; Laws, 1994, ch 564, § 98; Laws, 2001, ch. 574, § 2, eff July 30, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws, 1993, ch. 518.

Laws, 1994, ch. 564, § 104, provides as follows:

"SECTION 104. Section 100 of this act shall take effect and be in force from and after January 1, 1995, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended whichever is later and the remainder of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On September 6, 1994, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1994, ch. 564, § 98.

On July 30, 2001, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2001, ch. 574, § 2.

JUDICIAL DECISIONS

1. Residency requirement.

As a candidate for judge of the Mississippi Court of Appeals has to reside within the district for the office she seeks, and as appellee did not meet her burden to prove that she met the residency requirement, the trial court erred in finding that she was a qualified candidate for the position. Bryant v. Westbrooks, 99 So. 3d 128, 2012 Miss. LEXIS 462 (Miss. 2012).

Candidate for the office of Court of Appeals of the State of Mississippi must reside within the district for the office she seeks. Bryant v. Westbrooks, 99 So. 3d 128, 2012 Miss. LEXIS 462 (Miss. 2012).

RESEARCH REFERENCES

ALR.

Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor. 51 A.L.R.5th 747.

§ 9-4-7. Structure and personnel of court.

(1) The Court of Appeals shall be subject to the administrative policies and procedures as may be established by the Supreme Court, including docket control of the Court of Appeals cases. Whenever feasible, and subject to approval of the Supreme Court, the administrative structure of the Supreme Court shall also support the Court of Appeals.

(2) The Clerk of the Supreme Court shall be the Clerk of the Court of Appeals and appointment of employees by the Court of Appeals shall be governed by personnel policies adopted and approved by the Administrative Office of the Courts. Whenever feasible and approved by the Supreme Court, employees of the Supreme Court shall also serve the Court of Appeals. The records of the Court of Appeals shall be kept by the Supreme Court Clerk or a deputy of the clerk.

(3) The Chief Justice of the Supreme Court shall appoint a Chief Judge of the Court of Appeals for a term of four (4) years, and the person so named shall be eligible for reappointment, subject to the discretion of the Chief Justice.

(4) The Chief Justice may assign one or more Court of Appeals Judges to serve as lower court trial judges to provide docket relief as he deems necessary.

(5) The Court of Appeals shall be authorized to employ an Opinion Editor of the Court of Appeals.

HISTORY: Laws, 1993, ch. 518, § 4; Laws, 2007, ch. 551, § 1, eff from and after July 1, 2007.

Editor's Notes — Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws of 1993, ch. 518.

§ 9-4-9. Quorum of court; assignment of judges to panels; presiding judge of panel.

The Supreme Court shall prescribe rules for the submission of cases to panels of the court and to the court en banc, as well as all other rules of procedure for the Court of Appeals. The Chief Judge of the Court of Appeals, insofar as practicable, shall assign judges to panels in such a manner that each judge shall sit a substantially equal number of times with each other judge. The Chief Judge shall preside over any panel on which he or she shall sit, and the Chief Judge shall appoint one or more judges to preside, at the will and pleasure of the Chief Judge, over any panel on which the Chief Judge is not a member of a panel.

HISTORY: Laws, 1993, ch. 518, § 5; Laws, 1995, ch. 357, § 1, eff from and after passage (approved March 14, 1995).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws, 1993, ch. 518.

§ 9-4-11. Location of court.

The Court of Appeals shall be located in the City of Jackson and shall have offices as convenient to the State Law Library and the Supreme Court as can be arranged; but the court en banc, or any panel thereof, may sit at such other locations within the state as the Supreme Court may determine by rule.

HISTORY: Laws, 1993, ch. 518, § 6, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the enactment of this section).

Editor's Notes — Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws of 1993, ch. 518.

§ 9-4-13. Salaries of court and its personnel.

(1) The judges of the Court of Appeals shall receive salaries as provided for in Section 25-3-35, shall be reimbursed for mileage expenses incurred in performing their duties at the rate authorized by law for public officials and employees as provided for in Section 25-3-41, and shall receive an expense allowance as provided for in Section 25-3-43.

(2) Staff attorneys, law clerks, the opinion editor and all other employees of the Court of Appeals shall be of the same grade classification as Supreme Court employees performing the same or similar duties.

HISTORY: Laws, 1993, ch. 518, § 7; Laws, 1999, ch. 532, § 2; Laws, 2007, ch. 551, § 2, eff from and after July 1, 2007.

Editor's Notes — Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws, 1993, ch. 518.

Laws of 1999, ch. 532, § 4 provides:

"SECTION 4. This act shall take effect and be in force from and after July 1, 1999, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever date is later."

On July 6, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 532, § 2.

§ 9-4-15. Time for holding elections for office of judge of Court of Appeals.

General elections for the office of judge of the Court of Appeals shall be held at the same times as general elections for congressional offices.

HISTORY: Laws, 1993, ch. 518, § 31; Laws, 1994, ch 564, § 99, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws, 1993, ch. 518.

Laws, 1994, ch. 564, § 104, provides as follows:

"SECTION 104. Section 100 of this act shall take effect and be in force from and after January 1, 1995, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended whichever is later and the remainder of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On September 6, 1994, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1994, ch. 564, § 99.

§ 9-4-17. Severability clause.

If any section, paragraph, sentence, clause, phrase or any part of Chapter

518, Laws of 1993, is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

HISTORY: Laws, 1993, ch. 518, § 43, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the enactment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the enactment of this section by Laws, 1993, ch. 518.

CHAPTER 5.

CHANCERY COURTS

Chancellors, Districts and Terms. 9-5-1
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CHANCELLORS, DISTRICTS AND TERMS

Sec.
9-5-1. Chancellors; election, holding of court terms, terms of office, and residency.
9-5-3. Chancery court districts; terms of court; determination of appropriate number of chancellorships for each district.
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9-5-58. Twentieth district; number and election of chancellors.

§ 9-5-1. Chancellors; election, holding of court terms, terms of office, and residency.

A chancellor shall be elected for and from each of the chancery court districts as provided in this chapter and the listing of individual precincts shall be those precincts as they existed on October 1, 1990. He shall hold court in any other district with the consent of the chancellor thereof when in their opinion the public interest may be thereby promoted. The terms of all chancellors elected at the regular election for the year 1930 shall begin on the first day of January, 1931, and their terms of office shall continue for four (4) years. A chancellor shall be a resident of the district in which he serves but shall not be required to be a resident of a subdistrict if the district is divided into subdistricts.

HISTORY: Codes, 1857, ch. 62, art. 1; 1871, § 978; 1880, §§ 1803, 1804; 1892, §§ 456, 458; 1906, § 505; Hemingways's 1917, § 261; 1930, § 319; 1942 § 1227; Laws, 1930, ch. 113; Laws, 1994, ch 564, § 1; Laws, 2002, ch. 356, § 1. (See Editor's note).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 1.

Laws 2002, ch. 713 (Senate Concurrent Resolution No. 543), provides in pertinent part:

"BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the following amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state:

"Amend Section 153, Mississippi Constitution of 1890, to read as follows:

"'Section 153. The judges of the circuit and chancery courts shall be elected by the people in a manner and at a time to be provided by the Legislature. The judges elected for a term of office beginning from and after January 1, 2003, shall hold their office for a term of six (6) years.'

"BE IT FURTHER RESOLVED, That this proposed amendment shall be submitted by the Secretary of State to the qualified electors at an election to be held on the first Tuesday after the first Monday of November 2002, as provided by Section 273 of the Constitution and by general law.

"BE IT FURTHER RESOLVED, That the explanation of this proposed amendment for the ballot shall read as follows: 'This proposed constitutional amendment increases the terms of office of circuit and chancery court judges from four to six years beginning January 1, 2003.'

"BE IT FURTHER RESOLVED, That the Attorney General of the State of Mississippi shall submit this resolution, immediately upon adoption by the Legislature, to the Attorney General of the United States or to the United States District Court for the District of Columbia, in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

This section was set out to correct an error in the 2014 Replacement Volume. The version of the section that was to become effective upon effectuation under Section 5 of the Voting Rights Act of 1965, as amended and extended, provided a proposed amendment to Section 153 of the Mississippi Constitution (by Chapter 713, Laws of 2002) was ratified by the electorate, was erroneously set out in the bound volume. The United States Attorney General interposed no objection to the amendment of this section by Chapter 356, Laws of 2002, but the constitutional amendment was defeated by the electorate, and the amendment by Chapter 356, Laws of 2002, never became law.

The section as set out above is the section as it appeared prior to the 2002 amendment.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 63, provides in part:

"SECTION 63. (1) The Standing Joint Legislative Committee on Reapportionment is directed to provide the counties census block equivalency files and maps necessary to assist the counties in identifying the boundaries of any subdistricts within a chancery or circuit court district.

"(2)(a) The Split Precinct Block List developed in conjunction with House Bill No. 703, 2015 Regular Session [Chapter 476, Laws of 2015], that details the portions of the partial or split precincts that are contained within a judicial subdistrict by census block number as that list is utilized to detail partial or split precincts for judicial subdistricts in this act is hereby incorporated into and shall be construed to be an integral part of this act. A partial or split precinct contained in this act is identified by an asterisk (*) following its designation within any judicial subdistrict. The Standing Joint Legislative Committee on Reapportionment shall file the Split Precinct Block List with the Secretary of State.

"(3)(a) This act shall be liberally construed to effectuate the purposes hereof and to redistrict the trial courts of this state in compliance with constitutional requirements.

"(b) It is intended that this act and the districts and subdistricts described herein completely encompass all the area within the state and all the voters in this state. It is also intended that no district shall include any of the area included within the description of any other district, and that no subdistrict shall include any of the area included within the description of any other subdistrict.

"(c)(i) If the districts or subdistricts described in this act do not carry out the purposes hereof because of: omissions; duplication; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards or other divisions thereof, or of their boundary lines; then the Secretary of State, at the joint request of the Lieutenant Governor and the Speaker of the House, by order, shall correct any omissions, overlaps, erroneous nomenclature or other defects in the description of the districts and subdistricts so as to accomplish the purposes and objectives of this act.

"(ii) In promulgating any order under this subsection (3), the Secretary of State, in addition to insuring that all areas of the state are completely and accurately encompassed in the districts and subdistricts, shall be guided by the following standards:

"1. Gaps in the description of any district or subdistrict shall be completed in a manner that results in a total description of the district or subdistrict that is consonant with the description of adjacent districts or subdistricts and results in complete contiguity of districts and subdistricts;

"2. In any allocation of area or correction of descriptions made pursuant to this subsection, the Secretary of State shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and subdistricts and avoid the unnecessary division of political subdivisions.

"(d) A copy of any order issued under this subsection shall be filed by the Secretary of State in his own office and in the offices of the affected commissioners of election and registrars. The Secretary of State may adopt reasonable rules regulating the procedure for applications for orders under this act and the manner of serving and filing any notice or copy of orders. Upon the filing of an order, the description of any affected district or subdistrict shall be deemed to have been corrected to the full extent as if the correction had been contained in the original description set forth in this act.

"(e) The redistricting contained in this act supersedes any prior redistricting."

Laws of 2015, ch. 476, § 63, was enacted with a subdivision (2)(a) but no (2)(b).

Chapter 476, Laws of 2015 amended a number of sections in Chapters 5 and 7 of Title 9. For a complete list of Code sections affected by Chapter 476, Laws of 2015, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Judge not to sit when interested or related, see § 9-1-9.

General provisions common to courts, see §§ 11-1-1 et seq.

Civil practice and procedure provisions common to courts, see § 11-1-1 et seq.

Civil practice and procedure generally in chancery courts, see § 11-5-1 et seq.

Provisions for filling vacancies in the office of chancellor, see § 23-15-849.

For rules governing practice and procedure in chancery courts, see Miss. Uniform Chancery Court Rules 1.01 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This section is constitutional, although the Const. 1890 § 158, while authorizing the legislature to provide for the interchange of circuit judges, contains no similar provision respecting chancellors. First Nat'l Bank v. Abe Block & Co., 82 Miss. 197, 33 So. 849, 1903 Miss. LEXIS 115 (Miss. 1903).

2. Construction and application.

State judicial elections come within coverage of "results test" provisions of § 2 of Voting Rights Act of 1965 (42 USCS § 1973), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348, 1991 U.S. LEXIS 3627 (U.S. 1991).

Chancellor is not disqualified when not related to parties or financially interested. Walker v. Walker, 140 Miss. 340, 105 So. 753, 1925 Miss. LEXIS 267 (Miss. 1925), overruled, Davis v. Davis, 194 Miss. 343, 12 So. 2d 435, 1943 Miss. LEXIS 75 (Miss. 1943).

Chancellor has no authority in habeas corpus proceedings to admit person convicted of felony to bail pending appeal. Leggett v. Vannison, 133 Miss. 22, 96 So. 518, 1923 Miss. LEXIS 106 (Miss. 1923).

RESEARCH REFERENCES

ALR.

Power of successor judge taking office during termtime to vacate, etc., judgment entered by his predecessor. 11 A.L.R.2d 1117.

Power of court to impose standard of personal appearance or attire. 73 A.L.R.3d 353.

Law Reviews.

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

§ 9-5-3. Chancery court districts; terms of court; determination of appropriate number of chancellorships for each district.

(1) The state shall be divided into an appropriate number of chancery court districts, severally numbered and composed of the counties as set forth in the sections which follow. A court to be styled "The Chancery Court of the

County of ________ " shall be held in each county, and within each judicial district of a county having two (2) judicial districts, at least twice a year. Court shall be held in chancery court districts consisting of a single county on the same dates state agencies and political subdivisions are open for business excluding legal holidays. The dates upon which terms shall commence and the number of days for which terms shall continue in chancery court districts consisting of more than one (1) county shall be set by order of the chancellor in accordance with the provisions of subsection (2) of this section. A matter in court may extend past a term if the interest of justice so requires.

(2) An order establishing the commencement and continuation of terms of court for each of the counties within a chancery court district consisting of more than one (1) county shall be entered annually and not later than October 1 of the year immediately preceding the calendar year for which the terms of court are to become effective. Notice of the dates upon which terms of court shall commence and the number of days for which the terms shall continue in each of the counties within a chancery court district shall be posted in the office of the chancery clerk of each county within the district and mailed to the office of the Secretary of State for publication and distribution to all Mississippi Bar members. If an order is not timely entered, the terms of court for each of the counties within the chancery court district shall remain unchanged for the next calendar year.

(3) The number of chancellorships for each chancery court district shall be determined by the Legislature based upon the following criteria:

(a) The population of the district;

(b) The number of cases filed in the district;

(c) The caseload of each chancellor in the district;

(d) The geographic area of the district;

(e) An analysis of the needs of the district by the court personnel of the district; and

(f) Any other appropriate criteria.

(4) The Judicial College of the University of Mississippi Law Center and the Administrative Office of Courts shall determine the appropriate:

(a) Specific data to be collected as a basis for applying the above criteria;

(b) Method of collecting and maintaining the specified data; and

(c) Method of assimilating the specified data.

(5) In a district having more than one (1) office of chancellor, there shall be no distinction whatsoever in the powers, duties and emoluments of those offices except that the chancellor who has been for the longest time continuously a chancellor of that court or, should no chancellor have served longer in office than the others, the chancellor who has been for the longest time a member of The Mississippi Bar shall be the senior chancellor. The senior chancellor shall have the right to assign causes and dockets and to set terms in districts consisting of more than one (1) county.

HISTORY: Codes, 1880, §§ 1455, 1790; 1892, §§ 440, 448; 1906, §§ 487, 496; Hemingway's 1917, §§ 238, 249; 1930, § 318; 1942, § 1215; Laws, 1930, ch. 113; Laws, 1936, ch. 230; Laws, 1947, 1st Ex. ch. 10; Laws, 1948, ch. 239, § 1; Laws,

1950, ch. 315, § 1; Laws, 1952, ch. 232, § 1; Laws, 1954 Ex. ch. 18; Laws, 1958, ch. 269, § 1; Laws, 1966, ch. 326, § 1; Laws, 1977, ch. 451, § 3; Laws, 1982, ch. 355, § 1; Laws, 1984, ch. 443, § 1; Laws, 1985, ch. 502, § 1; Laws, 1994, ch 564, § 2; Laws, 2015, ch. 476, § 1, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 2.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Cross References — Division of state into chancery court districts, see Miss. Const. Art. 6, § 152.

Constitutional authority for electing chancellor, see Miss. Const. Art. 6, § 153.

Prohibition of chancellor practicing law, see § 9-1-25.

Circuit court districts and terms, see §§ 9-7-3 et seq.

Terms of county court, see § 9-9-19.

Exemption of the judiciary from provisions of open meetings law, see § 25-41-3.

Chancellor violating gambling law, see § 97-33-3.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 1- 9, 22, 23.

CJS.

21 C.J.S., Courts §§ 121-135, 148-170.

§ 9-5-5. First district; composition.

The First Chancery Court District is composed of the following counties:

(a) Alcorn County;
(b) Itawamba County;
(c) Lee County;
(d) Monroe County;
(e) Pontotoc County;
(f) Prentiss County;
(g) Tishomingo County; and
(h) Union County.

HISTORY: Codes, 1930, § 318; 1942, § 1216; Laws, 1932, chs. 141, 151; Laws, 1936, ch. 230; Laws, 1950, ch. 322; Laws, 1968, ch. 314, § 5; Laws, 1985, ch. 502, § 2; Laws, 1994, ch. 564, § 3; Laws, 2015, ch. 476, § 2, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 3.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-7. First district; number of chancellors.

(1) There shall be four (4) chancellors for the First Chancery Court District.

(2) The four (4) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four." The chancellor to fill Place One must be a resident of Alcorn, Prentiss or Tishomingo County. The chancellors to fill Place Two and Place Three must reside in Itawamba, Lee, Monroe, Pontotoc or Union County. The chancellor to fill Place Four may be a resident of any county in the district. Election of the four (4) offices of chancellor shall be by election to be held in every county within the First Chancery Court District.

HISTORY: Codes, 1942, § 1216.1; Laws, 1968, ch. 314, §§ 1-4; Laws, 1974, ch. 373, § 1; Laws, 1994, ch. 564, § 4; Laws, 2005, ch. 501, § 1, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 3, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 4.

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 1.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-9. Second district; composition.

The Second Chancery Court District is composed of the following counties:

(a) Jasper County;
(b) Newton County; and
(c) Scott County.

HISTORY: Codes, 1930, § 318; 1942, § 1217; Laws, 1932, chs. 141, 142; Laws, 1936, ch. 231; Laws, 1938, ch. 278; Laws, 1940, ch. 223; Laws, 1947, 1st Ex. ch. 10, § 2; Laws, 1948, chs. 240, 241; Laws, 1966, ch. 326, § 6; Laws, 1968, ch. 315, § 1; Laws, 1974, ch. 496; Laws, 1977, ch. 451, § 4; Laws, 1982, ch. 355, § 2; Laws, 1985, ch. 502, § 3; Laws, 1994, ch. 564, § 5; Laws, 2015, ch. 476, § 4, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 5.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Cross References — Terms of chancery court in Rankin County as twentieth chancery court district, see § 9-5-57.

JUDICIAL DECISIONS

1. In general.

Summons by publication addressed to a nonresident minor made returnable on a day which is neither a rules day nor the first day of a regular term of court is void on direct attack. Khoury v. Saik, 203 Miss. 155, 33 So. 2d 616, 1948 Miss. LEXIS 244 (Miss. 1948).

§ 9-5-11. Third district; composition.

(1) The Third Chancery Court District is composed of the following counties:

(a) DeSoto County;
(b) Grenada County;
(c) Montgomery County;
(d) Panola County;
(e) Tate County; and
(f) Yalobusha County.

(2) The Third Chancery Court District shall be divided into two (2) subdistricts as follows:

(a) Subdistrict 3-1 shall consist of DeSoto County.

(b) Subdistrict 3-2 shall consist of Grenada County, Montgomery County, Panola County, Tate County and Yalobusha County.

HISTORY: Codes, 1930, § 318; 1942, § 1218; Laws, 1932, ch. 141; Laws, 1946, ch. 398; Laws, 1948, ch. 242; Laws, 1958, ch. 269, § 5; Laws, 1964, ch. 302; Laws, 1966, ch. 328, § 1; Laws, 1982, ch. 457, § 1; Laws, 1985, ch. 502, § 4; Laws, 1994, ch. 564, § 6; Laws, 2015, ch. 476, § 5, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 6.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-13. Third district; number of chancellors; number and election of chancellors of subdistricts.

(1) There shall be three (3) chancellors for the Third Chancery Court District.

(2)(a) The chancellor of Subdistrict 3-1 shall be elected from DeSoto County. The two (2) chancellors of Subdistrict 3-2 shall be elected from Grenada County, Montgomery County, Panola County, Tate County and Yalobusha County.

(b) For purposes of appointment and election, the three (3) chancellorships shall be separate and distinct. The chancellorship in Subdistrict 3-1 shall be denominated only as "Place One," and the chancellorships in Subdistrict 3-2 shall be denominated only as "Place Two" and "Place Three."

HISTORY: Codes, 1942, § 1218.1; Laws, 1970, ch. 325, §§ 1-4, eff from; Laws, 1994, ch. 564, § 7; Laws, 2005, ch. 501, § 2, eff Jan. 1, 2007.

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 7.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 2.

§ 9-5-15. Fourth district; composition.

(1) The Fourth Chancery Court District is composed of the following counties:

(a) Amite County;
(b) Franklin County;
(c) Pike County; and
(d) Walthall County.

(2) There shall be two (2) chancellors for the Fourth Chancery Court District. The two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Codes, 1930, § 318; 1942, § 1219; Laws, 1932, ch. 141; Laws, 1942, ch. 309; Laws, 1944, ch. 313; Laws, 1948, ch. 243; Laws, 1954 Ex. Sess. ch. 18, § 5; Laws, 1966, ch. 329, § 1; Laws, 1985, ch. 502, § 5; Laws, 1994, ch. 564, § 8; Laws, 2015, ch. 476, § 6, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 8.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 64, provides:

"SECTION 64. Candidates for new chancellorships and circuit judgeships created by this act shall run for those offices in a special election to be conducted in conjunction with the general election of November 2015. Candidates shall file the intent to be a candidate not later than 5:00 p.m. on June 1, 2015, and otherwise shall qualify as provided by Section 23-15-977, and shall run for office and be elected as provided in Sections 23-15-974 through 23-15-985 (Nonpartisan Judicial Election Act). The judges elected shall serve a three-year term to begin January 1, 2016, and the terms of those offices shall thereafter be as is provided for chancellors and circuit judges generally."

§ 9-5-17. Fifth district; composition.

(1) The Fifth Chancery Court District is composed of Hinds County.

(2) The Fifth Chancery Court District shall be divided into the following four (4) subdistricts:

(a) Subdistrict 5-1 shall consist of the following precincts in Hinds County: 1, 2, 4, 5, 6, 8, 9, 10, 32, 33, 34, 35, 36, 44, 45, 46, 47, 72, 73, 74, 75, 76, 77, 78, 79, 92, 93, 96 and 97.

(b) Subdistrict 5-2 shall consist of the following precincts in Hinds County: 11, 12, 13, 14, 15, 16, 17, 23, 27, 28, 29, 30, 37, 38, 39, 40, 41, 42, 43, 80, 81, 82, 83, 84, 85, Brownsville, Cynthia, Pocahontas and Tinnin.

(c) Subdistrict 5-3 shall consist of the following precincts in Hinds County: 18, 19, 20, 21, 22, 24, 25, 26, 31, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 86, 89 and Jackson State.

(d) Subdistrict 5-4 shall consist of the following precincts in Hinds County: 87, 88, 90, 91, 94, 95, Bolton, Byram 1, Byram 2, Cayuga, Chapel Hill, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Clinton 5, Clinton 6, Dry Grove, Edwards, Learned, Old Byram, Pinehaven, Raymond 1, Raymond 2, Spring Ridge, St. Thomas, Terry, Utica 1 and Utica 2.

HISTORY: Codes, 1930, § 318; 1942, § 1220; Laws, 1932, chs. 141, 150; Laws, 1934, ch. 175; Laws, 1938, ch. 279; Laws, 1948, ch. 244; Laws, 1950, ch. 315, § 2; Laws, 1955, Ex. ch. 35, § 1; Laws, 1956, ch. 217; Laws, 1975, ch. 416; Laws, 1985, ch. 502, § 6; Laws, 1994, ch. 564, § 9; Laws, 2015, ch. 476, § 7, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 9.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

§ 9-5-19. Fifth district; number and election of chancellors; divisions of court.

(1) There shall be four (4) chancellors for the Fifth Chancery Court District. One chancellor shall be elected from each subdistrict.

(2) While there shall be no limitation whatsoever upon the powers and duties of the said chancellors other than as cast upon them by the Constitution and laws of this state, the court in the First Judicial District of Hinds County, in the discretion of the senior chancellor, may be divided into four (4) divisions

as a matter of convenience by the entry of an order upon the minutes of the court.

HISTORY: Codes, 1942, § 1220.1; Laws, 1955 Ex. ch. §§ 1-5; Laws, 1956, ch. 217; Laws, 1960, ch. 226; Laws, 1971, ch. 381, § 1; Laws, 1994, ch. 564, § 10, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 10.

§ 9-5-21. Sixth district; composition.

The Sixth Chancery Court District is composed of the following counties:
(a) Attala County;
(b) Carroll County;
(c) Choctaw County;
(d) Kemper County;
(e) Neshoba County; and
(f) Winston County.

HISTORY: Codes, 1930, § 318; 1942, § 1221; Laws, 1932, ch. 141; Laws, 1934, chs. 176, 177; Laws, 1938, ch. 280; Laws, 1942, ch. 316; Laws, 1948, chs. 245, 239, § 3; Laws, 1950, ch. 339; Laws, 1956, ch. 218; Laws, 1966, ch. 330, § 1; Laws, 1976, ch. 306; Laws, 1985, ch. 502, § 7; Laws, 1994, ch. 564, § 11; Laws, 2015, ch. 476, § 8, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 11.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-22. Sixth district; number of chancellors.

(1) There shall be two (2) chancellors for the Sixth Chancery Court District.

(2) The two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Laws, 1974, ch. 371; Laws, 1994, ch. 564, § 12; Laws, 2005, ch. 501, § 3, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 9, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the

amendment of this section by Laws of 1994, ch. 564, § 12.

The preamble to Laws of 2005 of ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 3.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-23. Seventh district; composition.

(1) The Seventh Chancery Court District is composed of the following counties:

(a) Bolivar County;
(b) Coahoma County;
(c) Leflore County;
(d) Quitman County;
(e) Tallahatchie County; and
(f) Tunica County.

(2) The Seventh Chancery Court District shall be divided into two (2) subdistricts as follows:

(a) Subdistrict 7-1 shall consist of Bolivar County and Coahoma County;

(b) Subdistrict 7-2 shall consist of Leflore County, Quitman County, Tallahatchie County and Tunica County.

HISTORY: Codes, 1930, § 318; 1942, § 1222; Laws, 1932, chs. 141, 148; Laws, 1934, ch. 178; Laws, 1938, ch. 281; Laws, 1950, ch. 359; Laws, 1956, ch. 219; Laws, 1964, ch. 303; Laws, 1968, ch. 317, § 1; Laws, 1974, ch. 343; Laws, 1985, ch. 502, § 8; Laws, 1994, ch. 564, § 13; Laws, 2015, ch. 476, § 10, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the

amendment of this section by Laws, 1994, ch. 564, § 13.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JUDICIAL DECISIONS

1. Jurisdiction.

Separate maintenance was related to the transaction forming the basis of a former husband's complaint for divorce as he conceded that he sought a divorce in Florida in order to avoid or cease his separate maintenance obligation in Mississippi; in his Florida complaint, the husband asserted that no alimony was sought. To the contrary, the Mississippi separate maintenance orders showed a basis for a possible award of alimony, and the former wife's motion to enforce the Mississippi orders did not waive personal jurisdiction for alimony purposes. Because the Florida court did not obtain personal jurisdiction over the former wife, and its judgment was not res judicata over her claim for alimony, the issue of alimony was properly before a chancery court in Mississippi. Lofton v. Lofton, 924 So. 2d 596, 2006 Miss. App. LEXIS 168 (Miss. Ct. App. 2006).

§ 9-5-25. Seventh district; number and election of chancellors.

[Until January 1, 2011, this section shall read as follows:]

There shall be two (2) chancellors for the Seventh Chancery Court District. One (1) chancellor shall be elected from each subdistrict.

[From and after January 1, 2011, this section shall read as follows:]

There shall be three (3) chancellors for the Seventh Chancery Court District. The three (3) chancellorships shall be separate and distinct. One (1) chancellor shall be elected from Subdistrict 7-1 and shall be denominated for purposes of appointment and election only as "Place One," and two (2) chancellors shall be elected from Subdistrict 7-2 and shall be denominated for purposes of appointment and election only as "Place Two" and "Place Three."

HISTORY: Codes, 1942, § 1222.1; Laws, 1968, ch. 317, § 2; Laws, 1994, ch. 564, § 14; Laws, 2005, ch. 501, § 4; Laws, 2010, ch. 438, § 2, eff (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section. See Editor's note).

Editor's Notes — The version of this section that is currently in effect is not certain. The amendments in the second tier of this section are to take effect from and after the date the bill containing the amendments is effectuated under Section 5 of the Voting Right Act of 1965, as amended and extended. The bill was submitted to the United States Attorney General under Section 5, but the Attorney General has not yet responded to the submission. The United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. It has not yet been determined if bills that were submitted to the United States Attorney General under Section 5 and were pending at the time of the *Shelby County* decision are now in effect as a result of that decision. After such a determination has been made, that information will be included in the Advance Code Service.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 14.

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Senate Bill 2339 of 2005 [Chapter 501, Laws of 2005] does not, by its express terms, amend, modify or repeal Sections 9-5-255 and 41-21-61 (a). Miller, Aug. 2, 2005, A.G. Op. 05-0206.

§ 9-5-27. Eighth district; composition.

The Eighth Chancery Court District is composed of the following counties:

(a) Hancock County;
(b) Harrison County; and
(c) Stone County.

HISTORY: Codes, 1930, § 318; 1942, § 1223; Laws, 1932, ch. 141; Laws, 1938, ch. 282; Laws, 1947, 1st Ex. ch. 10, § 4; Laws, 1948, ch. 246; Laws, 1952, ch. 232, § 2; Laws, 1954, ch. 226; Laws, 1958, ch. 275; Laws, 1960, ch. 227; Laws, 1964, ch. 304, § 1; Laws, 1968, ch. 318, §§ 1; Laws, 1985, ch. 502, § 9; Laws, 1994, ch. 564, § 15; Laws, 2015, ch. 476, § 11, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 15.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015,

provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-29. Eighth district; number and election of chancellors; divisions of court.

(1) There shall be four (4) chancellors for the Eighth Chancery Court District.

(2) The four (4) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four."

(3) While there shall be no limitation whatsoever upon the powers and duties of the chancellors other than as cast upon them by the Constitution and laws of this state, the court in the Eighth Chancery Court District, in the discretion of the senior chancellor, may be divided into four (4) divisions as a matter of convenience by the entry of an order upon the minutes of the court.

HISTORY: Codes, 1942, § 1223.1; Laws, 1964, ch. 305, §§ 1-4; Laws, 1972, ch. 310, §§ 1, 2; Laws, 1985, ch. 502, § 43; Laws, 1994, ch. 564, § 16; Laws, 2015, ch. 476, § 12, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 16.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-31. Ninth district; composition.

(1) The Ninth Chancery Court District is composed of the following counties:

(a) Humphreys County;
(b) Issaquena County;
(c) Sharkey County;
(d) Sunflower County;
(e) Warren County; and
(f) Washington County.

(2) The Ninth Chancery Court District shall be divided into three (3) subdistricts as follows:

(a) Subdistrict 9-1 shall consist of the following precincts in the following counties:

(i) Sunflower County: Boyer-Linn, Drew, Fairview-Hale, Indianola 2 East*, Indianola 3 North*, Indianola 3 Northeast*, Indianola 3 South*, Rome, Ruleville, Ruleville North and Sunflower Plantation; and

(ii) Washington County: American Legion, Brent Center, Buster Brown Community Center, Darlove Baptist Church*, Elks Club, Extension Building, Grace Methodist Church*, Greenville Industrial College, Leland Health Department Clinic, Leland Rotary Club, Metcalf City Hall and Potter House Church.

(b) Subdistrict 9-2 shall consist of Humphreys County and the following precincts in the following counties:

(i) Sunflower County: Doddsville, Indianola 2 East*, Indianola 2 West, Indianola 3 North*, Indianola 3 Northeast*, Indianola 3 South*, Indianola Southeast, Inverness, Moorhead, Sunflower 3 and Sunflower 4; and

(ii) Washington County: Arcola City Hall, Christ Wesleyan Methodist Church, Darlove Baptist Church*, Glen Allan Health Clinic, Grace Methodist Church*, Hollandale City Hall, St. James Episcopal Church, Swiftwater Baptist Church, Tampa Drive and Ward's Recreation Center.

(c) Subdistrict 9-3 shall consist of Issaquena County, Sharkey County and Warren County.

HISTORY: Codes, 1930, § 318; 1942, § 1224; Laws, 1932, ch. 141; Laws, 1936, ch. 232; Laws, 1942, ch. 312; Laws, 1948, ch. 247; Laws, 1950, ch. 320; Laws, 1956, ch. 220; Laws, 1966, ch. 331, § 1; Laws, 1979, ch. 404; Laws, 1980, ch. 325; Laws, 1985, ch. 502, § 10; Laws, 1994, ch. 564, § 17; Laws, 2015, ch. 476, § 13, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 17.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

§ 9-5-33. Ninth district; number and election of chancellors.

There shall be three (3) chancellors for the Ninth Chancery Court District. One (1) chancellor shall be elected from each subdistrict.

HISTORY: Codes, 1942, § 1224.1; Laws, 1966, ch. 331, § 2; Laws, 1994, ch. 564, § 18, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 18.

§ 9-5-35. Tenth district; composition.

The Tenth Chancery Court District is composed of the following counties:
(a) Forrest County;
(b) Lamar County;
(c) Marion County;
(d) Pearl River County; and
(e) Perry County.

HISTORY: Codes, 1930, § 318; 1942, § 1225; Laws, 1932, ch. 141; Laws, 1934, ch. 179; Laws, 1936, ch. 233; Laws, 1947, 1st Ex. ch. 10, § 5; Laws, 1956, ch. 221; Laws, 1958, ch. 274; Laws, 1971, ch. 319, § 1; Laws, 1973, ch. 341, § 1; Laws, 1975, ch. 325, § 2(1), 1981, ch. 492, § 1; Laws, 1985, ch. 502, § 11; Laws, 1994, ch. 564, § 19; Laws, 2015, ch. 476, § 14, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 19.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-36. Tenth district; number and election of chancellors; residence.

(1) There shall be four (4) chancellors for the Tenth Chancery Court District.

(2) The four (4) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four." The chancellor to fill Place One and Place Four may be a resident of any county in the district. The chancellor to fill Place Two must be a resident of Lamar, Marion, Pearl River or Perry County. The chancellor to fill Place Three must be a resident of Forrest County.

Election of the four (4) offices of chancellor shall be by election to be held in every county within the Tenth Chancery Court District.

HISTORY: Laws, 1975, ch. 325, § 1(1, 3); Laws, 1985, ch. 502, § 44; Laws, 1994, ch. 564, § 20; Laws, 2005, ch. 501, § 5, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 15, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 20.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 5.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-37. Eleventh district; composition.

(1) The Eleventh Chancery Court District is composed of the following counties:

- (a) Holmes County;
- (b) Leake County;
- (c) Madison County; and
- (d) Yazoo County.

(2) The Eleventh Chancery Court District shall be divided into two (2) subdistricts as follows:

(a) Subdistrict 11-1 shall consist of Holmes County, Yazoo County and the following precincts in Madison County: Bible Church, Canton 4, Canton 5, Flora, Madison County Baptist Family Life Center, Magnolia Heights and Smith School;

(b) Subdistrict 11-2 shall consist of Leake County and the following precincts in Madison County: Bear Creek, Camden, Cameron, Canton 1, Canton 2, Canton 3, Canton 7, Cedar Grove, Cobblestone, Couparle, Gluckstadt, Highland Colony Baptist Church, Liberty, Lorman/Cavalier, Luther Branson School, Madison 1, Madison 2, Madison 3, Main Harbor, New Industrial Park, North Bay, Ratliff Ferry, Ridgeland 1, Ridgeland 3, Ridgeland 4, Ridgeland First Methodist Church, Ridgeland Tennis Center, Sharon, Sunnybrook, Tougaloo, Trace Harbor, Victory Baptist Church, Virlilia, Whisper Lake and Yandell Road.

HISTORY: Codes, 1930, § 318; 1942, § 1226; Laws, 1932, ch. 141; Laws, 1940, ch. 224; Laws, 1966, ch. 332, § 1; Laws, 1968, ch. 321, § 1; Laws, 1978, ch. 446, § 1 1980, ch. 314; Laws, 1985, ch. 502, § 12; Laws, 1994, ch. 564, § 21; Laws, 2015, ch. 476, § 16, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 21.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

Cross References — Administrative Office of Courts to assist court clerks, see § 9-21-3.

§ 9-5-38. Eleventh district; number and election of chancellors.

There shall be three (3) chancellors for the Eleventh Chancery Court District. The three (3) chancellorships shall be separate and distinct. One (1) chancellor shall be elected from Subdistrict 11-1 and denominated for purposes of appointment and election only as "Place One," one (1) chancellor shall be elected from Subdistrict 11-2 and denominated for purposes of appointment and election only as "Place Two," and one (1) chancellor shall be elected at large from the entire Eleventh Chancery Court District and denominated for purposes of appointment and election only as "Place Three."

HISTORY: Laws, 1978, ch. 446, § 2; Laws, 1985, ch. 502, § 45; Laws, 1994, ch. 564, § 22; Laws, 2015, ch. 476, § 17, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the

amendment of this section by Laws of 1994, ch. 564, § 22.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 64, provides:

"SECTION 64. Candidates for new chancellorships and circuit judgeships created by this act shall run for those offices in a special election to be conducted in conjunction with the general election of November 2015. Candidates shall file the intent to be a candidate not later than 5:00 p.m. on June 1, 2015, and otherwise shall qualify as provided by Section 23-15-977, and shall run for office and be elected as provided in Sections 23-15-974 through 23-15-985 (Nonpartisan Judicial Election Act). The judges elected shall serve a three-year term to begin January 1, 2016, and the terms of those offices shall thereafter be as is provided for chancellors and circuit judges generally."

§ 9-5-39. Twelfth district; composition.

The Twelfth Chancery Court District is composed of the following counties:

(a) Clarke County; and

(b) Lauderdale County.

HISTORY: Codes, 1942, § 1226.2; Laws, 1947, 1st Ex. ch. 10, § 7; Laws, 1948, ch. 248; Laws, 1958, ch. 263; Laws, 1966, ch. 326, § 7; Laws, 1972, ch. 345, § 1; Laws, 1983, ch. 479; Laws, 1985, ch. 502, § 13; Laws, 1994, ch. 564, § 23; Laws, 2015, ch. 476, § 18, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 23.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-40. Twelfth district; number of chancellors.

(1) There shall be two (2) judges for the Twelfth Chancery Court District.

(2) The two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Laws, 1975, ch. 312; Laws, 1994, ch 564, § 24; Laws, 2005, ch. 501, § 6, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 19, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the

amendment of this section by Laws of 1994, ch. 564, § 24.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 6.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-41. Thirteenth district; composition.

(1) The Thirteenth Chancery Court District is composed of the following counties:

(a) Covington County;
(b) Jefferson Davis County;
(c) Lawrence County;
(d) Simpson County; and
(e) Smith County.

(2) There shall be two (2) chancellors for the Thirteenth Chancery Court District. The two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Codes, 1942, § 1226.3; Laws, 1947, 1st Ex. ch. 10, § 8; Laws, 1964, ch. 306, § 1; Laws, 1972, ch. 384, § 1; Laws, 1985, ch. 502, § 14; Laws, 1994, ch. 564, § 25; Laws, 2005, ch. 501, § 7, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 20, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 25.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of

circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 7.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-43. Fourteenth district; composition.

(1) The Fourteenth Chancery Court District is composed of the following counties:

(a) Chickasaw County;
(b) Clay County;
(c) Lowndes County;
(d) Noxubee County;
(e) Oktibbeha County; and
(f) Webster County.

(2) The Fourteenth Chancery Court District shall be divided into three (3) subdistricts as follows:

(a) Subdistrict 14-1 shall consist of Chickasaw County, Webster County and the following precincts in Oktibbeha County: Bell Schoolhouse*, Bradley, Center Grove, Central Starkville*, Craig Springs, Double Springs, East Starkville*, Gillespie Street Center*, Maben, North Adaton, North Longview, North Starkville 2*, North Starkville 3, Northeast Starkville, Self Creek, South Adaton, South Longview, South Starkville*, Sturgis and West Starkville*.

(b) Subdistrict 14-2 shall consist of the following precincts in the following counties:

(i) Clay County: Cedar Bluff, Central West Point, East West Point, Siloam, South West Point and Vinton; and

(ii) Lowndes County: Air Base A, Air Base B, Air Base C, Air Base D, Air Base E, Brandon A, Brandon B, Brandon C, Brandon D, Caledonia, Columbus High School A, Columbus High School B, Columbus High

School C, Columbus High School D, Dowdle Gas Training Center B, Fairgrounds C, Fairgrounds E, Fairgrounds F, Hunt C, Lee Middle School, Mitchell A, New Hope A, New Hope B, New Hope C, New Hope D, New Hope E, Rural Hill A, Rural Hill B, Rural Hill C, Sale A, Sale B, Sale C, Steens A, Steens B, Steens C, Trinity B, Union Academy B, Union Academy C and University A.

(c) Subdistrict 14-3 shall consist of Noxubee County and the following precincts in the following counties:

(i) Clay County: Cairo, Caradine, North West Point, Pheba, Pine Bluff, Tibbee, Union Star and West West Point;

(ii) Lowndes County: Artesia, Coleman A, Coleman B, Crawford A, Fairgrounds A, Fairgrounds B, Fairgrounds D, Fairgrounds G, Hunt A, Hunt B, Mitchell B, New Hope F, Plum Grove A, Plum Grove B, Plum Grove C, Propst Park Community Hut, Trinity A, Union Academy A, University B, West Lowndes A and West Lowndes B; and

(iii) Oktibbeha County: Bell Schoolhouse*, Central Starkville*, East Starkville*, Gillespie Street Center*, Hickory Grove, North Starkville 2*, Oktoc, Osborn, Sessums, South Starkville*, Southeast Oktibbeha and West Starkville*.

HISTORY: Codes, 1942, § 1226.7; Laws, 1948, ch. 239, § 4; Laws, 1950, ch. 353, § 1; Laws, 1952, ch. 230; Laws, 1956, ch. 222; Laws, 1968, ch. 309, § 1; Laws, 1985, ch. 502, § 15; Laws, 1994, ch. 564, § 26; Laws, 2015, ch. 476, § 21, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 26.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

§ 9-5-45. Fourteenth district; number and election of chancellors.

There shall be three (3) chancellors for the Fourteenth Chancery Court District. One (1) chancellor shall be elected from each subdistrict.

HISTORY: Codes, 1942, § 1226.7-01; Laws, 1970, ch. 326, §§ 1-4; Laws, 1994, ch. 564, § 27, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 27.

§ 9-5-47. Fifteenth district; composition.

The Fifteenth Chancery Court District is composed of the following counties:

(a) Copiah County; and
(b) Lincoln County.

HISTORY: Codes, 1942, § 1226.8; Laws, 1950, ch. 315, §§ 3-7; Laws, 1952, ch. 231, §§ 1-3 (paragraphs 2, 3, 5); Laws, 1962, ch. 280, §§ 1-6; Laws, 1971, ch. 305, § 1; Laws, 1976, ch. 302; Laws, 1985, ch. 502, § 16; Laws, 1994, ch. 564, § 28; Laws, 2015, ch. 476, § 22, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 28.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-49. Sixteenth district; composition.

The Sixteenth Chancery Court District is composed of the following counties:

(a) George County;
(b) Greene County; and
(c) Jackson County.

HISTORY: Codes, 1942, § 1226.9; Laws, 1952, ch. 232, §§ 3-8; Laws, 1954, ch. 246, § 1; Laws, 1966, ch. 334, § 1; Laws, 1974, ch. 306 § 1; Laws, 1975, ch. 311, § 1; Laws, 1977, ch. 432, § 1; Laws, 1985, ch. 502, § 17; Laws, 1994, ch. 564, § 29; Laws, 2015, ch. 476, § 23, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 29.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-50. Sixteenth district; number and election of chancellors.

(1) There shall be three (3) chancellors for the Sixteenth Chancery Court District.

(2) The three (3) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three."

HISTORY: Laws, 1973, ch. 421, § 1; Laws, 1977, ch. 431; Laws, 1985, ch. 502, § 46; Laws, 1994, ch. 564, § 30; Laws, 2015, ch. 476, § 24, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 30.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-51. Seventeenth district; composition; division; number and election of chancellors.

(1) The Seventeenth Chancery Court District is composed of the following counties:

(a) Adams County;
(b) Claiborne County;
(c) Jefferson County; and
(d) Wilkinson County.

(2) The Seventeenth Chancery Court District shall be divided into two (2) subdistricts as follows:

(a) Subdistrict 17-1 shall consist of Claiborne County, Jefferson County, and the following precincts in Adams County: Airport Carpenter*, Convention Center*, Foster Mound, Maryland*, Northside School, Palestine, Pine Ridge, Thompson and Washington*.

(b) Subdistrict 17-2 shall consist of Wilkinson County and the following precincts in Adams County: Beau Pre, Bellemont, By-Pass Fire Station, Carpenter*, Concord, Convention Center*, Courthouse, Duncan Park, Kingston, Liberty Park, Maryland*, Morgantown, Oakland and Washington.

(3) There shall be two (2) chancellors for the Seventeenth Chancery Court District. One (1) chancellor shall be elected from each subdistrict.

HISTORY: Codes, 1942, § 1226.95; Laws, 1954, Ex. ch. 18, §§ 2-4, 6, 7; Laws, 1971, ch. 418, § 1; Laws, 1972, ch. 381, § 1; Laws, 1975, ch. 478; Laws, 1985, ch. 502, § 18; Laws, 1994, ch. 564, § 31; Laws, 2015, ch. 476, § 25, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 31.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

§ 9-5-53. Eighteenth district; composition.

The Eighteenth Chancery Court District is composed of the following counties:

(a) Benton County;
(b) Calhoun County;
(c) Lafayette County;
(d) Marshall County; and
(e) Tippah County.

HISTORY: Codes, 1942, § 1226.96; Laws, 1958, ch. 269, §§ 2-4, 6, 7 (paragraphs 1-5); Laws, 1960, ch. 229 (paragraph 2); Laws, 1964, ch. 307 (paragraph 2); Laws, 1966, ch. 335, § 2; Laws, 1971, ch. 427, § 1; Laws, 1973, ch. 347, § 1; Laws, 1985, ch. 502, § 19; Laws, 1994, ch. 564, § 32; Laws, 2015, ch. 476, § 26, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 32.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-54. Eighteenth district; number of chancellors.

(1) There shall be two (2) chancellors for the Eighteenth Chancery Court District.

(2) The two (2) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Laws, 1979, ch. 387; Laws, 1994, ch. 564, § 33; Laws, 2005, ch. 501, § 8, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 27, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 33.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 8.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-55. Nineteenth district; composition.

The Nineteenth Chancery Court District is composed of the following counties:

(a) Jones County; and
(b) Wayne County.

HISTORY: Codes, 1942, § 1226.97; Laws, 1966, ch. 326, §§ 2-5; Laws, 1968, ch. 322, § 1; Laws, 1980, ch. 359; Laws, 1985, ch. 502, § 20; Laws, 1994, ch. 564, § 34; Laws, 2015, ch. 476, § 28, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 34.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-57. Twentieth district; composition.

The Twentieth Chancery Court District shall be Rankin County.

HISTORY: Laws, 1977, ch. 451, §§ 1, 2; reenacted, Laws, 1982, ch. 355, § 3; Laws, 1985, ch. 502, § 21; Laws, 1994, ch 564, § 35; Laws, 2015, ch. 476, § 29, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 35.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-5-58. Twentieth district; number and election of chancellors.

There shall be three (3) chancellors for the Twentieth Chancery Court District. For purposes of appointment and election the three (3) chancellorships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three."

HISTORY: Laws, 1994, ch. 564, § 36; Laws, 2015, ch. 476, § 30, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 564, § 36.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 64, provides:

"SECTION 64. Candidates for new chancellorships and circuit judgeships created by this act shall run for those offices in a special election to be conducted in conjunction with the general election of November 2015. Candidates shall file the intent to be a candidate not later than 5:00 p.m. on June 1, 2015, and otherwise shall qualify as provided by Section 23-15-977, and shall run for office and be elected as provided in Sections 23-15-974 through 23-15-985 (Nonpartisan Judicial Election Act). The judges elected shall serve a three-year term to begin January 1, 2016, and the terms of those offices shall thereafter be as is provided for chancellors and circuit judges generally."

JURISDICTION, POWERS AND AUTHORITY, VACATION MATTERS

Sec.

9-5-81. Jurisdiction of the chancery court, in general.
9-5-83. Court may determine all matters in estates administered.
9-5-85. Court may summon all persons and punish for contempt.
9-5-87. Power to punish for violation of injunction.
9-5-89. Guardian ad litem; appointment and compensation; effect of failure to appoint.
9-5-91. Information to be provided to Administrative Office of Courts by chancery clerk in chancery cases in which guardian ad litem is appointed.
9-5-93. Trial of causes in vacation; power to enter decree prior to adjournment of next succeeding term.
9-5-95. Court or chancellor may extend time in vacation.
9-5-97. Additional powers of chancellor in vacation.
9-5-99 and 9-5-101. Repealed.
9-5-103. Bonds of receivers, assignees, executors may be reduced or cancelled, if excessive or for sufficient cause.
9-5-105. Expense of chancellor in hearing vacation matter paid equally by parties.

§ 9-5-81. Jurisdiction of the chancery court, in general.

The chancery court in addition to the full jurisdiction in all the matters and cases expressly conferred upon it by the constitution shall have jurisdiction of all cases transferred to it by the circuit court or remanded to it by the supreme court; and such further jurisdiction, as is, in this chapter or elsewhere, provided by law.

HISTORY: Codes, Hutchinson's 1848, ch. 54, arts. 2 (1), 10 (4); 1857, ch. 62, art. 2; 1871, § 974; 1880, § 1829; 1892, § 482; 1906, § 532; Hemingway's 1917, § 289; 1930, § 351; 1942, § 1262.

Cross References — Constitutional jurisdiction of the chancery court, see Miss. Const. Art. 6, § 159.

Jurisdiction of Supreme Court, see § 9-3-9.

Jurisdiction of circuit courts generally, see §§ 9-7-81 et seq.

Jurisdiction of county courts, see § 9-9-21.

Civil practice and procedure provisions common to courts, see § 11-1-1 et seq.

Prohibition against reversal of judgment or decree in civil case for want of jurisdiction to render, see § 11-3-9.

Civil practice and procedure in chancery courts generally, see §§ 11-5-1 et seq.

Venue of civil actions generally, see §§ 11-11-1 et seq.

Provisions pertaining to injunctions, see §§ 11-13-1 et seq.

Suits to confirm title or interest, and to remove clouds on title, see §§ 11-17-1 et seq.

Jurisdiction over real property interests, see § 11-17-37.

Partition of land by chancery court, see § 11-21-3.

Sequestration of property, see §§ 11-29-1 et seq.

Attachment in chancery against nonresident, absent or absconding debtors, see § 11-31-1 et seq.

Garnishment proceedings, see §§ 11-35-1 et seq.

Habeas corpus proceedings, see §§ 11-43-1 et seq.

Suits by and against state or its political subdivisions, see §§ 11-45-1 et seq.

Provision that a person aggrieved by the refusal or neglect of a registrar or election commissioner to perform any duty relative to registration of electors may petition the chancery court for injunctive relief, see § 23-15-95.

Determination of primary election contests by a circuit judge or chancellor, see §§ 23-15-929 through 23-15-941.

Proceedings to compel public access to public records, see § 25-61-13.

Jurisdiction of appeals from school closing order of board of trustees, see § 37-65-129.

Jurisdiction of and procedures in chancery court for involuntary commitment proceedings, see § 41-21-63.

Appeal from denial, suspension or revocation of license to operate ambulatory surgical facility, see § 41-73-23.

Jurisdiction of chancery court to issue injunction and appoint receiver under Medicaid Fraud Control Act, see § 43-13-227.

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JUDICIAL DECISIONS

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I. Matters in Equity.

1. In general.

While subject matter jurisdiction lay within either the circuit or the chancery court, the circuit court had subject matter jurisdiction of heavy equipment vendor's action against a county board of supervisors where the amended complaint, although it sought some relief equitable in nature, in substantial part partook of an action at law, in that it charged the board of supervisors with breach of duties not unlike those generally contractual, and the complaint sought the assessment of civil penalties. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

Where under a divorce decree, entered pursuant to an agreement of the parties thereto relative to the support and maintenance of the parties' two children, the father assumed obligation to transfer to the children two insurance policies, but failed to do so before his death, equity would treat the children as clothed with the same interests as if the duty had been actually performed. Mahaffey v. First Nat'l Bank, 231 Miss. 798, 97 So. 2d 756, 1957 Miss. LEXIS 567 (Miss. 1957).

Chancery court of this state derives its equity jurisprudence from English Court of Chancery. Poole v. Mississippi Publishers Corp., 208 Miss. 364, 44 So. 2d 467, 1950 Miss. LEXIS 255 (Miss. 1950).

Equity will order that done which ought to have been done. United States Fidelity & Guaranty Co. v. Marathon Lumber Co., 119 Miss. 802, 81 So. 492, 1919 Miss. LEXIS 49 (Miss. 1919).

Court of equity is court of conscience, and exercising broad discretion should see that wrong and oppression are not inflicted under guise of legal procedure, but that justice is done as the right of each case demands. Herring v. Sutton, 86 Miss. 283, 38 So. 235, 1905 Miss. LEXIS 19 (Miss. 1905).

Equity is defined to be that system of justice which was administered by the high court of chancery in England. Smith v. Everett, 50 Miss. 575, 1874 Miss. LEXIS 95 (Miss. 1874), overruled, Bank of Mississippi v. Duncan, 52 Miss. 740, 1876 Miss. LEXIS 287 (Miss. 1876).

2. Legal remedy as affecting relief in equity.

A personal injury action arising out of an automobile accident was outside the subject matter jurisdiction of the chancery court although it was alleged that full, adequate and expeditious relief could not be granted by a circuit court and the expenses for discovery required in circuit court would be exorbitant, time consuming and inadequate. Blackledge v. Scott, 530 So. 2d 1363, 1988 Miss. LEXIS 434 (Miss. 1988).

Mortgagee will not be enjoined from foreclosing until accounting can be had between parties concerning a difference in attorney's fees where there was a plain, adequate, and complete remedy at law. Hub Bldg. & Loan Ass'n v. Warren, 207 Miss. 297, 42 So. 2d 203, 1949 Miss. LEXIS 340 (Miss. 1949).

Chancery court having taken jurisdiction on any ground of equity will administer full relief, although ground of equity fails under proof and remaining issues present legal subjects only and decree will cover only legal rights and grant legal remedies. McClendon v. Mississippi State Highway Com., 205 Miss. 71, 38 So. 2d 325, 1949 Miss. LEXIS 413 (Miss. 1949).

Resort to equity is improper if there is a plain, adequate and complete remedy at law. Pollard v. Phalen, 98 Miss. 155, 53 So. 453, 1910 Miss. LEXIS 47 (Miss. 1910).

The court cannot grant relief against a judgment at law where the remedy at law is plain and adequate. McKinney v. Willis, 64 Miss. 82, 1 So. 3, 1886 Miss. LEXIS 19 (Miss. 1886).

3. Jurisdiction in general.

The chancery court is a court of record and of general jurisdiction. Hollingsworth v. Central Oil Co., 236 Miss. 779, 112 So. 2d 518, 1959 Miss. LEXIS 376 (Miss. 1959).

Section 147 of Constitution, prohibiting reversal of decree in chancery for want of jurisdiction by reason of error as to whether cause was one of equity or common-law jurisdiction, covers only cases in which trial judge assumes jurisdiction, but where judge declines jurisdiction when in fact case is one good in equity, his action is reviewable. McClendon v. Mississippi State Highway Com., 205 Miss. 71, 38 So. 2d 325, 1949 Miss. LEXIS 413 (Miss. 1949).

Chancery court taking jurisdiction will retain the cause and adjust all equities. Barber v. Barber, 106 Miss. 128, 63 So. 343, 1913 Miss. LEXIS 114 (Miss. 1913).

The court having taken jurisdiction of a bill because of an equitable feature charged, does not lose it because such feature is not maintained by the evidence, and may adjudicate the legal rights of the parties. Atkinson v. Felder, 78 Miss. 83, 29 So. 767, 1900 Miss. LEXIS 175 (Miss. 1900).

The inhibition of § 147 of the Constitution against the reversal of a decree because the case was one of common law jurisdiction, does not confer jurisdiction of such a case upon the chancery court. Carbolineum Wood-Preserving & Mfg. Co. v. Meyer, 76 Miss. 586, 25 So. 297, 1898 Miss. LEXIS 138 (Miss. 1898).

The court will not take jurisdiction where the matters in controversy are actually pending in the circuit court, since to do so might lead to different results in the two courts. Ricks v. Richardson, 70 Miss. 424, 11 So. 935, 1892 Miss. LEXIS 81 (Miss. 1892).

"Full jurisdiction" indicates that where a court takes hold of a subject it ought to dispose of it fully and finally. Bank of Mississippi v. Duncan, 52 Miss. 740, 1876 Miss. LEXIS 287 (Miss. 1876); Georgia P. R. Co. v. Brooks, 66 Miss. 583, 6 So. 467, 1889 Miss. LEXIS 150 (Miss. 1889); Eyrich v. Capital State Bank, 67 Miss. 60, 6 So. 615, 1889 Miss. LEXIS 6 (Miss. 1889).

The legislature may confer on the chancery court jurisdiction of legal matters in aid of its authority over the principal matter of equitable nature. Bank of Mississippi v. Duncan, 52 Miss. 740, 1876 Miss. LEXIS 287 (Miss. 1876); Buie v. Pollock, 55 Miss. 309, 1877 Miss. LEXIS 137 (Miss. 1877).

4. —Foreign persons, controversies and decrees.

Chancery court has jurisdiction to hear and adjudicate controversy involving validity and effect of power of attorney, which has not been acknowledged and recorded in manner of conveyance of land, with respect to conveyance of real property situated in Republic of Greece where all parties reside in Mississippi and have been effectively subjected to in personam jurisdiction of chancery court; court may enter personal judgment, even though controlling substantive law is that of Greece; final adjudication would effectively bind parties in Mississippi and presumably in all other states even though adjudication may not be enforceable in Greece as matter of right and maybe not even as matter of comity. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

The chancery court of Mississippi has no power to set aside a decree of the chancery court of Arkansas. Cliburn v. Cliburn, 209 Miss. 631, 48 So. 2d 126, 1950 Miss. LEXIS 424 (Miss. 1950).

The court has jurisdiction of a bill for relief filed against a non-resident having property in this state to redress a wrong even if the damages are unliquidated. Gordon v. Warfield, 74 Miss. 553, 21 So. 151, 1896 Miss. LEXIS 158 (Miss. 1896).

Independently of statute, by virtue of its general equity powers, the court may, without a judgment at law and nulla bona return, subject to the demands of creditors the effects in this state of a nonresident. Dollman v. Moore, 70 Miss. 267, 12 So. 23, 1892 Miss. LEXIS 84 (Miss. 1892).

5. Equitable causes.

In an action relating to waste disposal, a transfer to a chancery court was improper because equitable claims were not added until after the transfer, and the action had been pending in the circuit court for five years before the transfer was requested. Georgia-Pacific Corp. v. Mooney, 909 So. 2d 1081, 2005 Miss. LEXIS 73 (Miss. 2005).

The court has jurisdiction, where one corporation transfers all its property to another, to enforce its liabilities against the property in the hands of the purchasing corporation, if the transfer is not in good faith, and its jurisdiction is not affected because incidentally the ascertainment of unliquidated damages is involved. Vicksburg & Y. C. Tel. Co. v. Citizens' Tel. Co., 79 Miss. 341, 30 So. 725, 1901 Miss. LEXIS 76 (Miss. 1901).

6. —Fraud or false representations.

Jurisdiction of court of equity to relieve against fraud and its legal equivalent with respect to judgments and decrees is as ample as that respecting contracts, dominant requirements being that facts constituting fraud, accident, mistake or surprise must have been controlling factors in effectuation of original decree, without which original decree would not have been made as it was made; facts justifying relief must be clearly and positively alleged as facts and must be clearly and convincingly proved; facts must not have been known to injured party at time of original decree, and his ignorance at time must not have been result of want of reasonable care and diligence. Van Norman v. Van Norman, 205 Miss. 114, 38 So.

2d 452, 1949 Miss. LEXIS 416 (Miss. 1949).

Chancery court has general jurisdiction of fraud. Foote-Patrick Co. v. Caladonia Ins. Co., 113 Miss. 419, 74 So. 292, 1917 Miss. LEXIS 116 (Miss. 1917).

Where an illiterate colored man was induced to exchange his land for other land worth not more than half his land by one in whom he had confidence representing other parties, deed was properly set aside for fraud. Carter v. Eastman Gardner & Co., 95 Miss. 651, 48 So. 615, 1909 Miss. LEXIS 226 (Miss. 1909).

7. —Mistake.

Equity will not give any relief from mistake if party could by reasonable diligence have ascertained real facts; nor where means of information are open to both parties and no confidence is reposed, but relief may be proper if enforcement of contract would be unconscionable and party making mistake was in exercise of ordinary diligence. Hunt v. Davis, 208 Miss. 710, 45 So. 2d 350, 1950 Miss. LEXIS 290 (Miss. 1950).

Equity will never give any relief from a mistake, if the party could by reasonable diligence, have ascertained the real facts, or where the means of information are open to both parties and no confidence is reposed. Terre Haute Cooperage v. Branscome, 203 Miss. 493, 35 So. 2d 537, 1948 Miss. LEXIS 297 (Miss. 1948).

Equity will grant appropriate relief to a party to a contract for a unilateral mistake under proper circumstances. Terre Haute Cooperage v. Branscome, 203 Miss. 493, 35 So. 2d 537, 1948 Miss. LEXIS 297 (Miss. 1948).

Equity will interfere to prevent unfair advantage of judgment rendered by mutual mistake of facts. Robertson v. Aetna Ins. Co., 134 Miss. 398, 98 So. 833, 1924 Miss. LEXIS 263 (Miss. 1924).

Equity jurisdiction of mistake is as broad and extensive as in case of fraud. Brown v. Wesson, 114 Miss. 216, 74 So. 831, 1917 Miss. LEXIS 23 (Miss. 1917).

Equity will correct mistake in description of land conveyed in a deed. McAllister v. Richardson, 103 Miss. 418, 60 So. 570, 1912 Miss. LEXIS 188 (Miss. 1912).

If one or both of the parties to an instrument are mistaken as to the subject matter, if the mistake is material equity will grant relief. Allen v. Luckett, 94 Miss. 868, 48 So. 186, 1909 Miss. LEXIS 339 (Miss. 1909).

Generally a mistake of law pure and simple is not ground for relief but there are some exceptions. Powell v. Plant, 23 So. 399 (Miss. 1898).

The court has jurisdiction to afford relief where there has been a mistake and such consequent confusion of goods that there is no adequate remedy at law. Selleck v. Macon Compress & Warehouse Co., 72 Miss. 1019, 17 So. 603, 1895 Miss. LEXIS 23 (Miss. 1895).

8. —Multiplicity of actions.

Where the rights and remedies of the complainants are entirely separate, independent and distinct, they cannot maintain a joint action either at common law or equity. Newton Oil & Mfg. Co. v. Sessums, 102 Miss. 181, 59 So. 9 (Miss. 1912).

To warrant joinder of all in one suit there must be some recognized ground of equitable interference or some community of interest in the subject-matter or a common right or title involved or a common purpose in pursuit of a common adversary where each may resort to equity. Cumberland Tel. & Tel. Co. v. Williamson, 101 Miss. 1, 57 So. 559, 1910 Miss. LEXIS 1 (Miss. 1910).

Where injury is continuous in its nature equity will interfere to prevent a multiplicity of suits. Cumberland Tel. & Tel. Co. v. Williamson, 101 Miss. 1, 57 So. 559, 1910 Miss. LEXIS 1 (Miss. 1910).

Actions at law by different parties for different forms of negligence will not be enjoined. Gulf Compress Co. v. Wooten Cotton Co., 98 Miss. 651, 54 So. 86, 1910 Miss. LEXIS 106 (Miss. 1910).

There is a marked difference between "multiplicity of suits" and "multitude of suits." Gulf & S. I. R. Co. v. Barnes, 94 Miss. 484, 48 So. 823, 1909 Miss. LEXIS 359 (Miss. 1909); Cumberland Tel. & Tel. Co. v. Williamson, 101 Miss. 1, 57 So. 559, 1910 Miss. LEXIS 1 (Miss. 1910).

Suits must be governed by same principles of law and practically the same facts before equity jurisdiction attaches. Gulf & S. I. R. Co. v. Barnes, 94 Miss. 484, 48 So. 823, 1909 Miss. LEXIS 359 (Miss.

1909); Gulf Compress Co. v. Wooten Cotton Co., 98 Miss. 651, 54 So. 86, 1910 Miss. LEXIS 106 (Miss. 1910).

Bill to avoid multiplicity of suits will not lie where the same law and facts do not apply to all the claims. Gulf & S. I. R. Co. v. Barnes, 94 Miss. 484, 48 So. 823, 1909 Miss. LEXIS 359 (Miss. 1909).

To avoid a multiplicity of suits complainant was entitled to maintain bill to restrain ejectment at law. Butler v. Scottish-American Mortg. Co., 93 Miss. 215, 46 So. 829, 1908 Miss. LEXIS 110 (Miss. 1908).

Equity has jurisdiction to restrain prosecution of a number of actions at law based upon the same state of facts. Whitlock v. Yazoo & M. V. R. Co., 91 Miss. 779, 45 So. 861, 1907 Miss. LEXIS 199 (Miss. 1907).

The court will not take jurisdiction on the ground of multiplicity to enjoin three separate actions at law, though the defense to all of them is the same. Johnston v. Stone, 71 Miss. 593, 14 So. 81, 1893 Miss. LEXIS 121 (Miss. 1893).

The court has no jurisdiction, in order to prevent a multiplicity of suits, to enjoin separate actions to recover damages against the complainant where the plaintiffs have no common interest except in the questions of law and fact involved and where they could not be proceeded against by the complainant separately. Tribbette v. Illinois C. R. Co., 70 Miss. 182, 12 So. 32, 1892 Miss. LEXIS 87 (Miss. 1892).

9. Penalties and forfeitures.

Where optional right of forfeiture is solely in the hands of one of the parties equity will enforce forfeiture of contract only where he acts with promptness and at the earliest reasonable time after default. Gannaway v. Toler, 122 Miss. 111, 84 So. 129, 1920 Miss. LEXIS 423 (Miss. 1920).

Equity will not enforce forfeiture, but will relieve against it. Eckert v. Searcy, 114 Miss. 150, 74 So. 818, 1917 Miss. LEXIS 15 (Miss. 1917).

Courts of equity cannot refuse to enforce statutory penalties. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

The rule that equity will not enforce a penalty applies only to penalties imposed by private contract, and not to statutory penalties. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

Where chancery court takes jurisdiction of suit to recover penalties under Code 1906 § 5004 Supreme Court will not reverse case solely on ground of want of jurisdiction. Grenada Lumber Co. v. State, 98 Miss. 536, 54 So. 8, 1910 Miss. LEXIS 92 (Miss. 1910).

The chancery court in proper cases will enforce statutory penalties as, where having jurisdiction for one purpose, the enforcement of such penalty is necessary to full relief. State v. Hall, 70 Miss. 678, 13 So. 39, 1893 Miss. LEXIS 49 (Miss. 1893).

10. Subjects of jurisdiction.

The ascertainment of boundaries alone does not confer jurisdiction as a separate ground of equity. Wroten v. Fenn, 203 Miss. 361, 35 So. 2d 534, 1948 Miss. LEXIS 279 (Miss. 1948).

11. —Property rights.

Section 65-7-201's procedure for establishing a private right-of-way is not a complete and adequate alternative remedy to the recognition and enforcement of an easement of way by necessity; thus, § 65-7-201 was not a bar to the chancery court's granting of equitable relief in establishing an easement by necessity. Broadhead v. Terpening, 611 So. 2d 949, 1992 Miss. LEXIS 824 (Miss. 1992).

Where a bill sought to cancel a cloud on the title to real estate and an injunction to prevent acts of alleged trespass, and discovery, the chancery court did not err in refusing to transfer the case to Circuit Court. Evans v. Broadhead, 233 So. 2d 771, 1970 Miss. LEXIS 1667 (Miss. 1970).

Unless some property rights are involved, civil courts have no jurisdiction over ecclesiastical controversy and are without jurisdiction to decide who is, or who ought to be, presiding bishop of diocese. Conic v. Cobbins, 208 Miss. 203, 44 So. 2d 52, 1950 Miss. LEXIS 240 (Miss. 1950).

Provision in church manual permitting bishops to retain 10% of all monies raised by them in their respective dioceses does not give an ousted bishop such property rights in monies raised by his successor in dioceses as to entitle him to invoke jurisdiction of civil courts as to the 10% claimed by him. Conic v. Cobbins, 208 Miss. 203, 44 So. 2d 52, 1950 Miss. LEXIS 240 (Miss. 1950).

Equity has jurisdiction to apportion between owners of property burden of common lien thereon. Swalm v. Sauls, 141 Miss. 515, 106 So. 775, 1926 Miss. LEXIS 454 (Miss. 1926).

Circumstances calling for equity to assume jurisdiction of boundary dispute between parties claiming through common grantor stated. Middleton v. Howell, 127 Miss. 880, 90 So. 725, 1921 Miss. LEXIS 292 (Miss. 1921).

The court has jurisdiction to enforce and is the proper forum in which to assert the rights of one who owns a house situated on the land of another. Decell v. McRee, 83 Miss. 423, 35 So. 940, 1903 Miss. LEXIS 60 (Miss. 1903).

A number of plaintiffs separately suing the same defendant in actions of trespass, the defendant's liability depending upon the same facts, and the act complained of being a constantly recurring one, may be enjoined and their cases consolidated to prevent a multiplicity of suits. Illinois C. R. Co. v. Garrison, 81 Miss. 257, 32 So. 996, 1902 Miss. LEXIS 136 (Miss. 1902).

The court has jurisdiction under § 500 Code 1892 (§ 550 Code 1906), of suits to remove clouds upon the title to real estate, if the complainant has a perfect legal or equitable title. Gentry v. Gamblin, 79 Miss. 437, 28 So. 809, 1901 Miss. LEXIS 4 (Miss. 1901).

The court has jurisdiction under § 2576 Code 1880 (Code 1906 § 3525), in a partition suit to adjudicate all conflicting claims of those properly joined as parties. This is true even where a defendant denies he is a co-tenant and asserts adverse title. Claughton v. Claughton, 70 Miss. 384, 12 So. 340, 1892 Miss. LEXIS 121 (Miss. 1892).

The chancery court, upon petition of a purchaser at a sale, under a decree made by it, may issue a writ of assistance to put the grantee of the purchaser in possession of the land bought, if the grantee, though not a party to the record, be entitled to possession as against him who has the possession. Gibson v. Marshall, 64 Miss. 72, 8 So. 205, 1886 Miss. LEXIS 16 (Miss. 1886).

To prevent a multiplicity of suits the court has jurisdiction of a bill by the purchaser of personal property which has been attached in his hands by creditors of the seller against the sheriff and attaching creditors to recover from the proceeds of a sale under the attachments a sum equal to the debt satisfied by his purchase. Lowenstein v. Abramsohn, 76 Miss. 890, 25 So. 498, 1899 Miss. LEXIS 10 (Miss. 1899); J. Pollock & Co. v. Okolona Sav. Institution, 61 Miss. 293, 1883 Miss. LEXIS 123 (Miss. 1883).

12. —Preservation of property.

Independently of statute the court has jurisdiction to issue a writ of sequestration for the seizure and preservation of personal property, so that it may be subject to any final decree that may be rendered. Dean v. Boyd, 86 Miss. 204, 38 So. 297, 1905 Miss. LEXIS 22 (Miss. 1905).

Notwithstanding an appeal from the final decree with supersedeas the chancery court has jurisdiction to make orders for the preservation of property in the hands of its receiver. Lamb v. Rowan, 81 Miss. 369, 33 So. 4, 1902 Miss. LEXIS 146 (Miss. 1902).

13. —Contracts.

A claim for specific performance of contract of employment plus attendant injunctive relief is within the jurisdiction of the county court on its equity side, and is also within the jurisdiction of the chancery court. Lee v. Coahoma Opportunities, Inc., 485 So. 2d 293, 1986 Miss. LEXIS 2423 (Miss. 1986).

Equity cannot give relief to party on the ground he has made an improvident contract. Butterfield Lumber Co. v. Guy, 92 Miss. 361, 46 So. 78, 1908 Miss. LEXIS 174 (Miss. 1908).

The court will not entertain jurisdiction of a bill for relief against a usurious contract except upon the condition that complainant submits to due equity. American Freehold Land & Mortg. Co. v. Jefferson, 69 Miss. 770, 12 So. 464, 1892 Miss. LEXIS 20 (Miss. 1892).

Where a suit is brought in equity on a note stipulating for an attorney's fee, if suit should be necessary to collect it, the chancery court has full jurisdiction to fix the quantum of the fee and include it in the decree. Eyrich v. Capital State Bank, 67 Miss. 60, 6 So. 615, 1889 Miss. LEXIS 6 (Miss. 1889).

14. —Conveyances, mortgages and liens.

A tort claimant may maintain an action in chancery court to set aside a conveyance made to hinder, delay or defraud such creditor without first obtaining a judgment at law ascertaining damages. Allred v. Nesmith, 245 Miss. 376, 149 So. 2d 29, 1963 Miss. LEXIS 525 (Miss. 1963).

Equity may foreclose mortgage or deed of trust independently of powers conferred on trustee by contract, and may order sale of property where trustee is precluded by stipulation to act. Smith v. Cleveland Steam Laundry, Inc., 131 Miss. 254, 95 So. 433, 1922 Miss. LEXIS 286 (Miss. 1922).

Equity foreclosing deed of trust may determine all questions in controversy. Robertson v. F. Krauss & Sons, 129 Miss. 310, 92 So. 74, 1922 Miss. LEXIS 42 (Miss. 1922).

Assignee of debt may appoint substitute trustee under provision of deed of trust allowing beneficiary, his executor, administrator, or assigns, under his hand and seal to appoint a substitute trustee. Scruggs v. Northern, 123 Miss. 169, 85 So. 89, 1920 Miss. LEXIS 15 (Miss. 1920).

The chancery court has jurisdiction of a bill by the assignee of a landlord's claim for rent against non-resident beneficiaries of a trust deed given by the tenant on agricultural products, the trustee in which had sued out a writ of replevin against the tenant, who had given a replevin-bond, sold the cotton, and paid the proceeds to his sureties to abide the result of the suit, and against such sureties as trustees in invitum, to have the priority of his lien established and the proceeds subjected to it. Dreyfus v. Gage, 79 Miss. 403, 30 So. 691, 1901 Miss. LEXIS 59 (Miss. 1901).

The jurisdiction of the court over property exceeding one thousand dollars in value, embraced in an assignment from creditors, does not attach until the petition and bond required by §§ 117, 118, and 119 Code 1892 (Code 1906 §§ 120, 121, 122), are filed and approved. Weimer v. Scales, 74 Miss. 1, 19 So. 588, 1896 Miss. LEXIS 94 (Miss. 1896).

When jurisdiction has attached, the court will determine all controversies in which liens are asserted, including attachments. Weimer v. Scales, 74 Miss. 1, 19 So. 588, 1896 Miss. LEXIS 94 (Miss. 1896).

The court has jurisdiction to enforce, in favor of the assignee of a note for the purchase price of personal property, and of a separate written contract reserving the legal title to the property sold as security therefor, the lien thereby created. Ross-Meehan Brake-Shoe Foundry Co. v. Pascagoula Ice Co., 72 Miss. 608, 18 So. 364, 1895 Miss. LEXIS 37 (Miss. 1895).

The court has jurisdiction of a bill to have sold for the payment of the purchase money an undivided interest in a partnership conveyed by conditional sale. Journey v. Priestly, 70 Miss. 584, 12 So. 799, 1893 Miss. LEXIS 25 (Miss. 1893).

15. —Trusts.

The chancery court properly authorized a sale of a portion of land conveyed for public burial purposes, even if the trustee of the land had no express power to sell, where the business owned by the trustee was in extreme financial difficulties and the land in question was threatened with foreclosure, and with the sale accomplished, all liens would be released and a substantial fund would be created for continued operation of the cemetery; courts of equity have an inherent power to protect trusts and may order a sale of part of the trust property if necessary for the execution of trust purposes. Hengen v. Perpetual Care Cemeteries, Inc., 230 So. 2d 795, 1970 Miss. LEXIS 1563 (Miss. 1970).

A chancery court may authorize an endowment trustee to sell sufficient of the corpus to enable it to fulfill the purpose of the endowment. Merchants Bank & Trust Co. v. Garrett, 203 Miss. 182, 33 So. 2d 603, 1948 Miss. LEXIS 248 (Miss. 1948).

Chancery court having jurisdiction of testamentary trust funds, bank acting as trustee and executor, and of the plaintiff has full jurisdiction to determine issues in respect to alleged improper handling of the trust funds. Garrett v. First Nat'l Bank & Trust Co., 153 F.2d 289, 1946 U.S. App. LEXIS 1914 (5th Cir. Miss. 1946).

Chancery court has general superintendence of all fiduciary relations, and the removal of a trustee appointed by it is within its power. Yeates v. Box, 198 Miss. 602, 22 So. 2d 411, 1945 Miss. LEXIS 232 (Miss. 1945).

The court has jurisdiction at the suit of the beneficiary to enforce a trust which has been abandoned by the trustee. Carey v. Fulmer, 74 Miss. 729, 21 So. 752, 1897 Miss. LEXIS 54 (Miss. 1897).

The court has jurisdiction to follow a trust fund through all changes, whether its identity is preserved or it is merged in a mass. To fix a charge upon a mass, however, complainant must show that his specific fund or thing has gone into and remains part of the mass. Shields v. Thomas, 71 Miss. 260, 14 So. 84, 1893 Miss. LEXIS 154 (Miss. 1893); Ryan v. Paine, 66 Miss. 678, 6 So. 320, 1889 Miss. LEXIS 164 (Miss. 1889); Kinney v. Paine, 68 Miss. 258, 8 So. 747, 1890 Miss. LEXIS 69 (Miss. 1890); Billingsley v. Pollock, 69 Miss. 759, 13 So. 828, 1892 Miss. LEXIS 38 (Miss. 1892).

16. —Adoptions.

The chancery court had jurisdiction to hear an adoption action even though the Youth Court had previously assumed jurisdiction of the minors involved as neglected children; although the Youth Court's jurisdiction continued for the offense and for the purpose of the "neglected or abused" subject matter, the jurisdiction did not act to exclude the adoption proceeding in the Chancery Court, since it constituted a different subject matter. In re Petition of Beggiani, 519 So. 2d 1208, 1988 Miss. LEXIS 51 (Miss. 1988).

17. —Miscellaneous.

Courts will not decide dispute as to which party was elected deacon of church. Edwards v. De Vance, 138 Miss. 580, 103 So. 194, 1925 Miss. LEXIS 57 (Miss. 1925).

Equity has jurisdiction of suit by depositors of insolvent bank against directors for deceit in inducing them to make deposits when the bank was insolvent, to prevent multiplicity of suits. Brotherhood of Locomotive Firemen v. Hand, 90 Miss. 893, 44 So. 161, 1907 Miss. LEXIS 112 (Miss. 1907).

The court has jurisdiction of a bill by a citizen and taxpayer in his own name and behalf to prevent a violation of the Constitution by an unauthorized and unlawful action of the boards of supervisors, although the attorney general and the district attorney decline to sue and refuse to authorize the use of their names in so doing. Board of Sup'rs v. Buckley, 81 Miss. 474, 33 So. 650 (Miss. 1902).

The court has no jurisdiction to determine when highways shall be improved. In the matter of local improvements and special assessments it can only interfere in cases of fraud or oppression, or some wrong constituting a plain abuse of discretion by the local authorities. Nugent v. Mayor, etc., of Jackson, 72 Miss. 1040, 18 So. 493, 1895 Miss. LEXIS 70 (Miss. 1895).

The remedy at law being inadequate, the court has jurisdiction without previous recovery at law of a bill by the owner of a residence fronting on a street to abate as a nuisance permanent obstructions in the street. Canton Cotton Warehouse Co. v. Potts, 69 Miss. 31, 10 So. 448, 1891 Miss. LEXIS 66 (Miss. 1891).

18. Equitable suits and remedies.

Case held to be one for an accounting in equity. Evans v. Hoye, 101 Miss. 244, 57 So. 805, 1911 Miss. LEXIS 131 (Miss. 1911).

19. —Accounting.

Chancery court had concurrent jurisdiction over a suit by the client of a real estate agency seeking damages and other relief at law based on an alleged failure to properly supervise an employee because the client also made a proper request for an equitable accounting; transfer of the action to a circuit court so that the realtors could try the case to a jury trial was not required because the relators did not have an absolute right to a jury trial in a civil action. RE/Max Real Estate Partners., Inc. v. Lindsley, 840 So. 2d 709, 2003 Miss. LEXIS 118 (Miss. 2003).

Where a nursing professor established a fiduciary relationship with a former employer, and the former employer had control of all the financial information involved in the relationship, a chancery court could properly order an accounting. Univ. Nursing Assocs., PLLC v. Phillips, 842 So. 2d 1270, 2003 Miss. LEXIS 59 (Miss. 2003).

A bill for redemption of corporate stock, pledged as collateral for indebtedness, and an accounting brought by the owner against the corporation will lie where the stock has been retired. Hudson v. Belzoni Equipment Co., 203 Miss. 212, 33 So. 2d 796, 1948 Miss. LEXIS 252 (Miss. 1948).

An action involving numerous dealings over a period of 16 years was properly transferred to the chancery court for accounting. Dunagin v. First Nat'l Bank, 118 Miss. 809, 80 So. 276, 1918 Miss. LEXIS 135 (Miss. 1918).

One who lends money at extortionate rates of interest under a contract void as against public policy and who establishes an agency for carrying on his nefarious business cannot maintain a suit in equity against one placed by him in charge of such business for an accounting where he must call in the aid directly or indirectly of the illegal contracts to make out his case. Woodson v. Hopkins, 85 Miss. 171, 37 So. 1000, 1904 Miss. LEXIS 167 (Miss. 1904).

20. —Discovery.

When a bill is sufficient as a bill of discovery, it is not competent to challenge it by motion for a bill of particulars or by special demurrers on grounds that, as to matters about which discovery is sought and is due, the bill does not allege in that detail and precision of averment required when the complainant is in possession of the facts which will enable him so to allege. Universal Life Ins. Co. v. Keller, 197 Miss. 1, 17 So. 2d 797, 1944 Miss. LEXIS 265 (Miss. 1944).

Having jurisdiction to discover amount of timber wasted chancery court could award damages therefor although plaintiff could have sued at law. Bomer Bros. v. Warren County, 103 Miss. 343, 60 So. 328, 1912 Miss. LEXIS 178 (Miss. 1912).

Having taken jurisdiction for discovery chancery court may grant full relief in the case. Keystone Lumber Yard v. Yazoo & M. V. R. Co., 96 Miss. 116, 50 So. 445, 1909 Miss. LEXIS 11 (Miss. 1909).

Discovery is proper where a subsequent written agreement affecting liability of the parties on a note was entered into by them before its assignment, possession of which is withheld from complainant who acquired the note, leaving him uncertain of his rights. Enochs v. Mississippi Bank & Trust Co., 87 Miss. 325, 39 So. 529, 1905 Miss. LEXIS 127 (Miss. 1905).

Where a compress company and a railroad company, for their own convenience, make an agreement whereby the latter instead of delivering cotton to the consignee, delivers it to the former and turns over to the consignee compress tickets calling not for specific bales, but for an equal number of bales of average weight and quality, the court has jurisdiction of a bill by the consignee to secure equitable relief for the loss of cotton shipped and for a shortage in shipment, against either or both, when the facts, when discovered, may justify. Mississippi Cotton Compress & Warehouse Co. v. M. Levy & Co., 83 Miss. 774, 36 So. 281, 1903 Miss. LEXIS 96 (Miss. 1903).

The court has jurisdiction of a bill to cancel an acquittance, for a discovery, and an accounting, notwithstanding the defendant is a foreign corporation having its office, books and assets out of the state, and though the court may find itself powerless to grant administrative relief if the defendant declines to make the discovery. Clark v. Equitable Life Assurance Soc., 76 Miss. 22, 23 So. 453, 1898 Miss. LEXIS 60 (Miss. 1898).

21. —Injunction.

Injunction is a proper remedy to declare void a state statute. Smith v. State, 242 So. 2d 692, 1970 Miss. LEXIS 1390 (Miss. 1970).

A bill of complaint alleging that state statutes prohibiting the teaching in public schools that man ascended or descended from a lower form of animal violated the First Amendment prohibition of the United States Constitution stated a cause of action for injunctive relief in Chancery against the State Board of Education. Smith v. State, 242 So. 2d 692, 1970 Miss. LEXIS 1390 (Miss. 1970).

The court has no jurisdiction of a bill to enjoin the clerk of a lower court from incorporating certain papers in the transcript on the ground that they are not properly part of the record. Portwood v. Feld, 72 Miss. 542, 17 So. 373, 1895 Miss. LEXIS 11 (Miss. 1895).

22. —Condemnation proceedings.

The court has jurisdiction, notwithstanding an injunction against the action of the Mississippi levee commissioners is prohibited by statute, to enjoin the condemnation of land for levee purposes on the ground that one of the three persons claiming to be commissioners to assess damages is without right to the office. Hurley v. Board of Mississippi Levee Comm'rs, 76 Miss. 141, 23 So. 580, 1898 Miss. LEXIS 62 (Miss. 1898).

23. —Exercise of trust powers.

In order to enjoin a sale under a deed of trust given to secure a usurious debt it is unnecessary for the complainant to have paid or tendered more than the principal of the debt, since under the statute he could recover back all interest paid. Southern Home Bldg. & Loan Ass'n v. Tony, 78 Miss. 916, 29 So. 825, 1901 Miss. LEXIS 143 (Miss. 1901); Purvis v. Woodward, 78 Miss. 922, 29 So. 917, 1901 Miss. LEXIS 148 (Miss. 1901).

The court may enjoin an effort to sell under the trust deed for largely more than the sum due. Carey v. Fulmer, 74 Miss. 729, 21 So. 752, 1897 Miss. LEXIS 54 (Miss. 1897).

24. Filing of criminal charges.

Equity has no jurisdiction to enjoin one from making an affidavit charging a criminal offense. Crighton v. Dahmer, 70 Miss. 602, 13 So. 237, 1893 Miss. LEXIS 55 (Miss. 1893).

25. —Foreign judicial proceedings.

Ordinarily chancery will enjoin an action in another state where it appears that it is fraudulent or brought for purpose of vexing, harassing or oppressing an opponent, or that it is an evasion of laws of the domicil. Poole v. Mississippi Publishers Corp., 208 Miss. 364, 44 So. 2d 467, 1950 Miss. LEXIS 255 (Miss. 1950).

State courts cannot interfere with federal courts as general rule, but when defendant is resident citizen of this state he can be required by injunction to bring his proposed action of libel within this state, it not having been previously filed, since it is strictly proceeding in personam, where Congress has not fixed venue. Poole v. Mississippi Publishers Corp., 208 Miss. 364, 44 So. 2d 467, 1950 Miss. LEXIS 255 (Miss. 1950).

Chancery court in determining right of injunction against foreign suit will consider hardship and inconvenience that may arise when party is called upon to defend at a distance. Poole v. Mississippi Publishers Corp., 208 Miss. 364, 44 So. 2d 467, 1950 Miss. LEXIS 255 (Miss. 1950).

Citizen of state will be restrained by its courts from instituting suit in another state against another citizen, both parties at all times residing within state, upon cause of action which has been adjudicated by such courts, and arose within its jurisdiction necessary witnesses being all there, and foreign suit being instituted for purpose of harassing and annoying other party, and plaintiff being insolvent. Poole v. Mississippi Publishers Corp., 208 Miss. 364, 44 So. 2d 467, 1950 Miss. LEXIS 255 (Miss. 1950).

26. —Labor disputes.

Norris-LaGuardia Act curtails only equity jurisdiction of federal courts in field of labor disputes and has no application to equity courts of state. Southern Bus Lines, Inc. v. Amalgamated Ass'n of Street, etc., 205 Miss. 354, 38 So. 2d 765, 1949 Miss. LEXIS 435 (Miss. 1949).

State chancery court has jurisdiction to issue injunction on behalf of bus company engaged in interstate and intrastate commerce against labor union and its members to enjoin use of violence, force, intimidation, and coercion during labor dispute. Southern Bus Lines, Inc. v. Amalgamated Ass'n of Street, etc., 205 Miss. 354, 38 So. 2d 765, 1949 Miss. LEXIS 435 (Miss. 1949).

Jurisdiction of court of equity may be invoked by one being picketed for injunctive relief against mass picketing. Southern Bus Lines, Inc. v. Amalgamated Ass'n of Street, etc., 205 Miss. 354, 38 So. 2d 765, 1949 Miss. LEXIS 435 (Miss. 1949).

27. —Nuisances and unlawful obstructions.

Where suit, brought in the chancery court for an injunction to abate a nuisance, failed on an injunction issue, the chancellor erred in not deciding the issue of damages. Shaw v. Owen, 229 Miss. 126, 90 So. 2d 179, 1956 Miss. LEXIS 593 (Miss. 1956).

Municipality creates public nuisance, which equity court has power to enjoin, when it gathers surface waters from thirteen acre area, much of it diverted from its natural flow, concentrates it into thirty inch culvert and discharges it upon lot adjoining important thoroughfare, with outtake therefrom of only fifteen inches, resulting in unsightly and unsanitary mosquito-breeding pond constituting menace to public health. City of Jackson v. Robertson, 208 Miss. 422, 44 So. 2d 523, 1950 Miss. LEXIS 258 (Miss. 1950).

Equity has jurisdiction, on grounds of injunctive relief and to prevent multiplicity of suits, of suit filed by a number of landowners against State Highway Commission for injunction to restrain continuation by defendant of common nuisance caused by obstruction of water course through respective lands of plaintiffs and for damages done to their crops and lands. McClendon v. Mississippi State Highway Com., 205 Miss. 71, 38 So. 2d 325, 1949 Miss. LEXIS 413 (Miss. 1949).

The court has jurisdiction at the suit of private parties having a special interest to award a mandatory injunction requiring the removal from navigable waters of an unlawful obstruction. Pascagoula Boom Co. v. Dickson, 77 Miss. 587, 28 So. 724, 1900 Miss. LEXIS 53 (Miss. 1900).

28. —Trespass.

Right to injunctive relief is basic ground of jurisdiction of court of equity, particularly when it comes to enjoining repeated and continuing trespass to property, where actions at law would entail multiplicity of suits and where damages would be irreparable. Southern Bus Lines, Inc. v. Amalgamated Ass'n of Street, etc., 205 Miss. 354, 38 So. 2d 765, 1949 Miss. LEXIS 435 (Miss. 1949).

29. —Violations of ordinances.

The chancery court has the power and authority to enjoin parties for violations of zoning ordinances and subdivision ordinances. Johnson v. Hinds County, 524 So. 2d 947, 1988 Miss. LEXIS 194 (Miss. 1988).

30. —Cancellation and rescission.

In a suit by an executrix for cancellation of a deed as a forgery, where there was a sharply drawn factual issue as to whether the purported conveyance was or was not a forgery, and the evidence adduced by the parties on the issue was in irreconcilable conflict, it was the province of the chancellor as trier of fact to resolve the conflict, and in so doing the credibility of the witnesses and the weight of the evidence were matters exclusively for the determination of the chancellor, and he having resolved the issue and found as a matter of fact that the instrument was a forgery and void, and there being ample evidentiary support for such finding, his decree must be affirmed on appeal. Blakeney v. Blakeney, 244 So. 2d 3, 1971 Miss. LEXIS 1309 (Miss. 1971).

Unilateral mistakes due to negligence of complainant in grossly overestimating number of feet of timber on land, did not entitle it to rescission of timber deed, where the real facts could have been ascertained by reasonable diligence and means of information were open to both parties and contract was not unconscionable. Terre Haute Cooperage v. Branscome, 203 Miss. 493, 35 So. 2d 537, 1948 Miss. LEXIS 297 (Miss. 1948).

Failure to support in accordance with a promise in a deed is not sufficient ground for cancellation of the deed. Wilson v. Combs, 203 Miss. 286, 33 So. 2d 830, 1948 Miss. LEXIS 266 (Miss. 1948).

Deed will not be set aside because grantor did not understand it, in absence of timely application. Wynn v. Kendall, 122 Miss. 809, 85 So. 85, 1920 Miss. LEXIS 477 (Miss. 1920).

The court has jurisdiction of a joint suit by a large number of persons who were fraudulently induced to execute separate promissory notes to the same payee, the facts in respect to each of them being the same, to enjoin the assignment of the notes, and have them surrendered and cancelled. Hightower & Crawford v. Mobile, J. & K. C. R. Co., 83 Miss. 708, 36 So. 82, 1903 Miss. LEXIS 92 (Miss. 1903).

31. —Recoupment.

Recoupment is of common law origin. It is a purely defensive claim and cannot be used by defendant offensively. Jurisdiction of courts of equity to make complete adjustment necessary to ends of justice is not affected by statute allowing set-off and recoupment nor repeal thereof; where complainant is a nonresident recoupment may be used both defensively and offensively. Sterling Products Co. v. Watkins-Gray Lumber Co., 131 Miss. 145, 95 So. 313, 1922 Miss. LEXIS 282 (Miss. 1922).

32. —Reformation.

The chancery court has jurisdiction of a suit to reform a contract for mutual mistake of the parties. Poole v. McCarty, 233 Miss. 724, 103 So. 2d 922, 1958 Miss. LEXIS 433 (Miss. 1958).

Court will reform mineral deed to include an eight acre tract where evidence discloses the eight-acres were omitted therefrom by mutual mistake of the parties. Adams v. Hill, 208 Miss. 341, 44 So. 2d 457, 1950 Miss. LEXIS 253 (Miss. 1950).

Chancery court has jurisdiction to reform deed and adjust equities between parties. Eichelberger v. Cooper, 101 Miss. 253, 57 So. 808, 1911 Miss. LEXIS 132 (Miss. 1911).

The court will not reform a contract where the parties did what they intended at the time, informed as they were. Wise v. Brooks, 69 Miss. 891, 13 So. 836, 1892 Miss. LEXIS 44 (Miss. 1892).

Where, through ignorance, a county treasurer is not required to give an additional bond as security for school funds, but gives only a general bond, the same being intended, however, by all parties, including the sureties, as security for all moneys to be received by the officer, the chancery court has jurisdiction of a bill to have the bond reformed so as to hold the securities liable for the proper disbursement of the school funds. Hall v. State, 69 Miss. 529, 13 So. 38, 1891 Miss. LEXIS 124 (Miss. 1891).

33. Specific performance.

Defendants' unconditional offer to sell, by warranty deed, their rights to certain land for $30,000 cash was an offer of a cash sale as distinguished from sale on credit, and plaintiff's statement, contained in his acceptance, that he would deliver a cashier's check upon execution of the deed was not a counteroffer, and the chancellor erred in refusing specific performance. Hutton v. Hutton, 239 Miss. 217, 119 So. 2d 369, 1960 Miss. LEXIS 280 (Miss.), cert. denied, 364 U.S. 834, 81 S. Ct. 67, 5 L. Ed. 2d 60, 1960 U.S. LEXIS 583 (U.S. 1960).

As a general rule, to be subject to specific performance a contract must be specific and distinct in its terms, plain and definite in its meaning, and must show with certainty that the minds of the parties have met and mutually agreed as to all its details upon the offer made on one hand and accepted on the other, but if any of these requisites are lacking, specific performance will not be decreed by a court of equity. Hutton v. Hutton, 239 Miss. 217, 119 So. 2d 369, 1960 Miss. LEXIS 280 (Miss.), cert. denied, 364 U.S. 834, 81 S. Ct. 67, 5 L. Ed. 2d 60, 1960 U.S. LEXIS 583 (U.S. 1960).

Specific performance of contracts in equity is not a matter of right, but of sound legal discretion, and it will never be decreed unless the contract is just and fair in all its parts. Everett v. Hubbard, 199 Miss. 857, 25 So. 2d 768, 1946 Miss. LEXIS 254 (Miss. 1946).

Bill for specific performance of contract made by undisclosed agent must aver the facts of agency, authority of the agent to make the contract, and that it was made for the principal or ratified by him. Young v. Clark, 135 Miss. 683, 100 So. 180, 1924 Miss. LEXIS 52 (Miss. 1924).

Specific performance of contract for sale of land will not be decreed unless the contract is specific in its terms and shows with certainty that the parties mutually agreed upon all the details. Fowler v. Nunnery, 126 Miss. 510, 89 So. 156, 1921 Miss. LEXIS 60 (Miss. 1921).

Equity will not specifically enforce contract obligating railroad to perfectly drain a farm through which its line extends and provide crossings as there is an adequate remedy at law. Yazoo & M. V. R. Co. v. Payne, 93 Miss. 50, 46 So. 405, 1908 Miss. LEXIS 79 (Miss. 1908).

The court has jurisdiction of a bill for the specific performance of a contract for the lease of trees on a homestead acquired under the United States Homestead laws, such leases not being prohibited either expressly or by fair implication by any statute, decision of the federal courts, or rules of any department or officer of the government. Orrell v. Bay Mfg. Co., 83 Miss. 800, 36 So. 561, 1903 Miss. LEXIS 98 (Miss. 1903), writ of error dismissed, 198 U.S. 581, 25 S. Ct. 804, 49 L. Ed. 1172, 1905 U.S. LEXIS 946 (U.S. 1905).

34. —Interpleader.

Sheriff can maintain interpleader to settle conflicting claims of parties to money realized under execution. Kelly v. Howard, 98 Miss. 543, 54 So. 10, 1910 Miss. LEXIS 93 (Miss. 1910).

35. —Bill of revivor.

Bill of revivor must be against personal representatives of deceased defendant. Carter v. Kimbrough, 122 Miss. 543, 84 So. 251, 1920 Miss. LEXIS 453 (Miss. 1920).

36. Relief from judgments.

The court has jurisdiction to grant new trials at law after the adjournment of the law court on newly discovered evidence. Tatum v. Tate, 77 Miss. 684, 27 So. 647, 1900 Miss. LEXIS 30 (Miss. 1900).

The court has jurisdiction of relief against a judgment obtained without notice, but instead of granting a new trial at law will take full cognizance of the case and do justice between the parties. Newman v. Taylor, 69 Miss. 670, 13 So. 831, 1892 Miss. LEXIS 41 (Miss. 1892).

37. Appeal; bill of review.

After term court of equity cannot set aside decree when matter completely disposed of. Correction can be made only on appeal or in proper case by bill of review. Carter v. Kimbrough, 122 Miss. 543, 84 So. 251, 1920 Miss. LEXIS 453 (Miss. 1920); Shirley v. Conway, 44 Miss. 434, 1870 Miss. LEXIS 132 (Miss. 1870); Lane & Standley v. W. J. Wheless & Co., 46 Miss. 666, 1872 Miss. LEXIS 35 (Miss. 1872).

Where the court has taken jurisdiction of a proceeding to compel an agent to account for misappropriated funds, its decree will not be disturbed on appeal on the ground that the complainant had a complete remedy at law. Const. 1890 § 147. Decell v. Hazlehurst Oil Mill & Fertilizer Co., 83 Miss. 346, 35 So. 761, 1903 Miss. LEXIS 50 (Miss. 1903).

The court has jurisdiction of a bill of review based on newly discovered evidence, though the decree has been appealed from and affirmed. Hall v. Waddill, 78 Miss. 16, 27 So. 936, 1900 Miss. LEXIS 71 (Miss. 1900).

The court or the chancellor in vacation has jurisdiction to grant an appeal from an interlocutory order discharging a receiver. Pearson v. Kendrick, 74 Miss. 235, 21 So. 37, 1896 Miss. LEXIS 147 (Miss. 1896).

If the court errs in holding that a cause is of equity jurisdiction, its decree because of the mandate of § 147 of the Constitution cannot be reversed on that ground. Barrett v. Carter, 69 Miss. 593, 13 So. 625, 1891 Miss. LEXIS 137 (Miss. 1891).

II. Divorce and Alimony.

38. Jurisdiction in general.

Separate maintenance was related to the transaction forming the basis of a former husband's complaint for divorce as he conceded that he sought a divorce in Florida in order to avoid or cease his separate maintenance obligation in Mississippi; in his Florida complaint, the husband asserted that no alimony was sought. To the contrary, the Mississippi separate maintenance orders showed a basis for a possible award of alimony, and the former wife's motion to enforce the Mississippi orders did not waive personal jurisdiction for alimony purposes. Because the Florida court did not obtain personal jurisdiction over the former wife, and its judgment was not res judicata over her claim for alimony, the issue of alimony was properly before a chancery court in Mississippi. Lofton v. Lofton, 924 So. 2d 596, 2006 Miss. App. LEXIS 168 (Miss. Ct. App. 2006).

Bill to set aside decree of divorce granted in another state on the ground of fraud and praying for decree that complainant and defendant are husband and wife under the law of Mississippi, is beyond the power of the chancery court to grant, since the decree, if granted, would be merely advisory, there being no affirmative or executory relief prayed for. Cliburn v. Cliburn, 209 Miss. 631, 48 So. 2d 126, 1950 Miss. LEXIS 424 (Miss. 1950).

Party who appears after judgment and moves to discharge judgment on ground of insufficient process or notice submits himself to jurisdiction of court, and court, in discharging judgment previously taken, should render proper judgment against him. Hawkins v. Hawkins, 208 Miss. 686, 45 So. 2d 271, 1950 Miss. LEXIS 286 (Miss. 1950).

When husband has submitted himself to general jurisdiction of chancery court by filing bill of review praying for review of decree in favor of wife on ground that court was without jurisdiction to award custody of child, alimony, attorney's fees and lien upon process by publication, wife's motion for rehearing on whole case should be sustained to extent of granting her rehearing upon such portions of her original bill as court has under its jurisdiction in view of husband's entry of appearance. Hawkins v. Hawkins, 208 Miss. 686, 45 So. 2d 271, 1950 Miss. LEXIS 286 (Miss. 1950).

Decree in separate maintenance suit is conclusive as res judicata in subsequent divorce suit, so far as concerns any issue which was litigated between parties in separate maintenance suit, and if issue was decided in favor of wife in that suit, it bars husband in any subsequent divorce suit brought by him predicated on facts which were in existence at time of maintenance decree and which were put in issue and decided in favor of wife therein. Van Norman v. Van Norman, 205 Miss. 114, 38 So. 2d 452, 1949 Miss. LEXIS 416 (Miss. 1949).

A court of equity has inherent power to declare a decree for alimony a specific lien upon the real estate of the husband to enforce the payment of alimony to the wife. Felder v. Felder's Estate, 195 Miss. 326, 13 So. 2d 823, 1943 Miss. LEXIS 127 (Miss. 1943).

The chancery court has inherent power where, in its judgment, it is deemed necessary for the enforcement of its orders to remand a defendant to the custody of the sheriff until he has executed the bond for the payment of alimony required of him by decree of the court. Felder v. Felder's Estate, 195 Miss. 326, 13 So. 2d 823, 1943 Miss. LEXIS 127 (Miss. 1943).

While the general rule is that in order for a decree or judgment awarding the custody of children to be valid, the child or children must be within the territorial jurisdiction of the court, their removal from the jurisdiction prior to decree after the court has once acquired jurisdiction of such children does not deprive the court of jurisdiction to fix their custody. Cole v. Cole, 194 Miss. 292, 12 So. 2d 425, 1943 Miss. LEXIS 71 (Miss. 1943).

The chancery court has jurisdiction of a bill by a wife driven from her home to vacate a conveyance by her husband of the homestead and subject it to alimony. Scott v. Scott, 73 Miss. 575, 19 So. 589, 1895 Miss. LEXIS 172 (Miss. 1895).

39. Annulment.

At common law, equity court had jurisdiction to annual marriage where party thereto did not have sufficient capacity to comprehend meaning of marriage and duties of such relation; and statute providing for insanity at the time of marriage as a cause for absolute divorce did not abrogate the power of the chancery court to annul a marriage on the ground of insanity brought for that purpose on behalf of the insane spouse. Parkinson v. Mills, 172 Miss. 784, 159 So. 651, 1935 Miss. LEXIS 128 (Miss. 1935).

40. Separate maintenance.

Grant of a wife's petition for separate maintenance was upheld because the chancery court did not manifestly err in finding that the wife, although admittedly partly to blame for the couple's separation, did not substantially contribute to the separation; considering each party's financial state and additional factors, the chancery court did not abuse its discretion in awarding $1,200 per month to the wife, even though this award was in excess of the husband's income after expenses. Tackett v. Tackett, 967 So. 2d 1264, 2007 Miss. App. LEXIS 746 (Miss. Ct. App. 2007).

The jurisdiction of the chancery court to make an allowance to a wife living apart from her husband for her separate maintenance is to be exercised according to equitable principles, and the amount to be allowed in any case must be determined according to the facts disclosed by the record in the particular case, and is largely within the discretion of the trial judge. Gardiner v. Gardiner, 230 Miss. 778, 90 So. 2d 668, 93 So. 2d 638, 1957 Miss. LEXIS 421, 1957 Miss. LEXIS 422 (Miss. 1957).

Separate maintenance of $250 per month for wife and her two children did not compel correction where husband was worth between $15,000 and $18,000 with a net annual income of from $5,000 to $6,000, especially since it remained subject to the court's revision. Hall v. Hall, 199 Miss. 478, 24 So. 2d 347, 1946 Miss. LEXIS 218 (Miss. 1946).

Suits for separate maintenance, wherein there is no prayer by bill or cross-bill for divorce, are not based upon statute (Code 1942, § 2743) providing for allowances under divorce decrees, or any other statute, but are lodged in the equity jurisdiction of the chancery courts and are regulated by equitable principles independently of, and apart from, statutes of divorce. Wilson v. Wilson, 198 Miss. 334, 22 So. 2d 161, 1945 Miss. LEXIS 202 (Miss.), modified, 198 Miss. 334, 23 So. 2d 303, 1945 Miss. LEXIS 203 (Miss. 1945).

Wife will be denied decree of separate maintenance where she has left or abandoned her husband and remains away without just cause. Wilson v. Wilson, 198 Miss. 334, 22 So. 2d 161, 1945 Miss. LEXIS 202 (Miss.), modified, 198 Miss. 334, 23 So. 2d 303, 1945 Miss. LEXIS 203 (Miss. 1945).

III. Matters Testamentary and of Administration.

41. Jurisdiction in general.

Equity will not exercise jurisdiction merely to interpret will, without request for further relief. Kendrick v. Kendrick, 135 Miss. 428, 100 So. 181, 1924 Miss. LEXIS 86 (Miss. 1924).

Chancery court has jurisdiction to determine all matters relating to administration of estates, and is always open for hearing petitions by interested parties for the construction of last wills of decedents. Owens v. Waddell, 87 Miss. 310, 39 So. 459, 1905 Miss. LEXIS 111 (Miss. 1905).

42. Powers and authority of court.

Duties and powers of administrator are fixed by law and cannot be enlarged by the chancery court. Alexander v. Herring, 99 Miss. 427, 55 So. 360, 1910 Miss. LEXIS 34 (Miss. 1910).

Chancery court cannot authorize administrator to engage in business with estate funds. Alexander v. Herring, 99 Miss. 427, 55 So. 360, 1910 Miss. LEXIS 34 (Miss. 1910).

43. Jurisdiction in particular matters.

Title vests in ward where guardian, though owner of land, under mistake holds it for ward for the statutory period; equity does not relieve where party mistakes law as to his private legal rights. Smith v. Muse, 138 Miss. 518, 103 So. 356, 1925 Miss. LEXIS 75 (Miss. 1925).

Suit on bond of executor appointed in Tennessee, in the name of the state of Tennessee, to compel payment of money to persons in this state to be administered in accordance with the laws of Tennessee was maintainable in Mississippi. Cutrer v. Tennessee, 98 Miss. 841, 54 So. 434, 1910 Miss. LEXIS 132 (Miss. 1910).

Distributee of an estate can recover personal estate of decedent in chancery but not at law if there are no valid debts outstanding and no administration or final settlement of administration. Jones v. R. L. Clemmer & Son, 98 Miss. 508, 54 So. 4, 1910 Miss. LEXIS 90 (Miss. 1910).

Courts of Mississippi have jurisdiction of a suit by creditors on an executrix bond for concealing assets, where executrix resided here at decedent's death, administration was undertaken in this state, the assets had their situs here, and her surety resides here. Myers v. Martinez, 95 Miss. 104, 48 So. 291, 1909 Miss. LEXIS 206 (Miss. 1909).

The court has jurisdiction of a suit by legatees upon a cause of action specifically bequeathed to them if there be no executor of the will and the estate of the testator owe no debts. Patton v. Pinkston, 86 Miss. 651, 38 So. 500, 1905 Miss. LEXIS 53 (Miss. 1905).

IV. Minor's Business.

44. Jurisdiction in general.

Decree in proceeding to remove disabilities of minority is valid though failing to recite jurisdictional facts when allegations of petition show basis of jurisdiction of court to act, as petition is part of record of the proceeding. Dyer v. Russell, 204 Miss. 719, 38 So. 2d 104, 1948 Miss. LEXIS 400 (Miss. 1948).

Question of whether chancery court has full or general jurisdiction of proceedings to remove disabilities of minority under § 159(f), Constitution of 1890, because chancery court was invested with jurisdiction for removal of disabilities of minority when Constitution became effective will not be passed on by Supreme Court when another decisive question will dispose of case. Dyer v. Russell, 204 Miss. 719, 38 So. 2d 104, 1948 Miss. LEXIS 400 (Miss. 1948).

The court exercises a general jurisdiction conferred by the Constitution in minor's business, just as in matters of general equity, and its records need not show the facts authorizing the exercise of such jurisdiction in a particular case. Ames v. Williams, 72 Miss. 760, 17 So. 762, 1895 Miss. LEXIS 28 (Miss. 1895).

45. Jurisdiction in particular matters.

Chancery court, in proceeding to remove disabilities of minority, acts as court of special and limited jurisdiction, and all jurisdictional facts must appeal of record. Dyer v. Russell, 204 Miss. 719, 38 So. 2d 104, 1948 Miss. LEXIS 400 (Miss. 1948).

The court has jurisdiction of a bill filed by one within two years after the removal of his disability of infancy to review the proceedings and decree in a partition suit under which land had been sold and the purchase money paid in good faith more than two years prior to filing such bill, notwithstanding the limitation of two years fixed by § 2693 Code 1880 (Code 1906 § 3122). Martin v. Gilleyler, 70 Miss. 324, 12 So. 254 (Miss. 1892).

The jurisdiction of the chancery court extends to the allowance of an attorney's fees out of an infant's estate for services rendered in the recovery of the estate. Epperson v. Nugent, 57 Miss. 45, 1879 Miss. LEXIS 11 (Miss. 1879).

A court of chancery has jurisdiction to decree an account for profits of land against a disseizor, where some of the complainants are infants. Carmichael v. Hunter, 5 Miss. 308, 1840 Miss. LEXIS 14 (Miss. 1840); Wathen v. Glass, 54 Miss. 382, 1877 Miss. LEXIS 16 (Miss. 1877).

V. Idiocy, Lunacy, and Persons of Unsound Mind.

46. Jurisdiction in general.

Chancery court has full jurisdiction over persons of unsound mind. Mabry v. Hoye, 124 Miss. 144, 87 So. 4, 1920 Miss. LEXIS 536 (Miss. 1920).

47. Jurisdiction in particular matters.

Chancery court has jurisdiction of suit to cancel settlement between two persons, both of whom claim all of a decedent's estate, on ground that one party was incompetent mentally to agree to it and that it was improvident and fraudulent, and it is unimportant that plaintiff described himself as co-administrator rather than next friend of incompetent, since the court looks to substance and not to the form of pleading. McCullum v. Gavin, 206 Miss. 151, 39 So. 2d 859, 1949 Miss. LEXIS 249 (Miss. 1949).

Court cannot reject and exercise jurisdiction at same time, and it is improper for court to dismiss suit to cancel settlement on ground it is without jurisdiction to hear petition in which plaintiff describes himself as co-administrator when in fact plaintiff was suing as next friend and at same time uphold agreement sought to be cancelled. McCullum v. Gavin, 206 Miss. 151, 39 So. 2d 859, 1949 Miss. LEXIS 249 (Miss. 1949).

Chancery court held to have jurisdiction to annul marriage of person where, at time of marriage, he was permanently insane. Parkinson v. Mills, 172 Miss. 784, 159 So. 651, 1935 Miss. LEXIS 128 (Miss. 1935).

Chancery court may not inquire into sanity of one under an indictment for murder. Hawie v. Hawie, 128 Miss. 473, 91 So. 131, 1922 Miss. LEXIS 133 (Miss. 1922).

Guardian of an insane widow may renounce will for her and exercise right of redemption given by Code 1906 § 5086. Hardy v. Richards, 98 Miss. 625, 54 So. 76, 1910 Miss. LEXIS 101 (Miss. 1910).

Renunciation of will by guardian of insane widow may be by ex parte proceedings and need not be by a bill in chancery. Hardy v. Richards, 98 Miss. 625, 54 So. 76, 1910 Miss. LEXIS 101 (Miss. 1910).

Where a conveyance of the homestead was executed by the husband when he was non compos as to all duties to his wife, and in fraud of her rights, a court of equity has jurisdiction to enjoin proceedings in ejectment by the grantee against her and to cancel the deed as a fraud on her rights in the homestead. Moseley v. Larson, 86 Miss. 288, 38 So. 234, 1905 Miss. LEXIS 18 (Miss. 1905).

Chancery court can decree an account for profits of land against a disseizor where complainants are non compos mentis. Robinson v. Burritt, 66 Miss. 356, 6 So. 206, 1889 Miss. LEXIS 105 (Miss. 1889).

VI. Cases Transferred from Circuit Court, or Remanded by Supreme Court.

48. In general.

The Supreme Court's remand of a child support case to the chancery court "for such further proceedings and judgments as may be required and as may be consistent with this opinion" did not restrict the chancery court to consideration of the issues litigated in the original proceeding. Harrell v. Duncan, 593 So. 2d 1, 1991 Miss. LEXIS 979 (Miss. 1991).

Where a suit was brought in the circuit court, but prior to the conclusion of the trial, the plaintiff made a motion to transfer the case to chancery court, and where the circuit court granted such motion, the chancery court was vested with jurisdiction and the circuit court could not dispose of the case. Ainsworth v. Blakeney, 227 Miss. 544, 86 So. 2d 501, 1956 Miss. LEXIS 723 (Miss. 1956).

Circuit court and chancery court to which suit was transferred were courts of competent jurisdiction to adjudicate litigation against Federal Housing Authority under Contract Settlement Act of 1944, 41 USCA, §§ 101 et seq., and Government Corporation Control Act of 1945, 31 USCA, § 846; and Federal Public Housing Authority is suable in Mississippi courts. Walsh Const. Co. v. Davis, 204 Miss. 509, 37 So. 2d 757, 1948 Miss. LEXIS 385 (Miss. 1948).

Where an appeal from county court in equity case was erroneously taken to the circuit court instead of the chancery court as required by Code 1942, § 1616, and it was too late to appeal anew, circuit court should have transferred case to chancery court under § 157 of the Constitution, and that court erred in overruling a motion therefor and dismissing the appeal. W. Horace Williams Co. v. Federal Credit Co., 198 Miss. 111, 21 So. 2d 582, 1945 Miss. LEXIS 173 (Miss. 1945).

Section 157 of the Constitution, providing that causes brought in circuit court of which chancery court has exclusive jurisdiction shall be transferred to the chancery court, is mandatory and applies to appeals from county court. W. Horace Williams Co. v. Federal Credit Co., 198 Miss. 111, 21 So. 2d 582, 1945 Miss. LEXIS 173 (Miss. 1945).

Decree of chancery court not reversed solely for reason that cause in which it was rendered is properly cognizable in law court only. Yazoo Delta Mortg. Co. v. Hutson, 140 Miss. 461, 106 So. 5, 1925 Miss. LEXIS 280 (Miss. 1925).

It is error to sustain demurrer after cause transferred to chancery court solely because plaintiff's right is at law or because equitable action is not strictly presented. Stark v. Fulton, 136 Miss. 637, 101 So. 857, 1924 Miss. LEXIS 188 (Miss. 1924).

Court will not take jurisdiction where the matters in controversy are actually pending in the circuit court. Ricks v. Richardson, 70 Miss. 424, 11 So. 935, 1892 Miss. LEXIS 81 (Miss. 1892).

VII. Other Cases Provided by Law.

49. Jurisdiction in general.

County youth court did not err in transferring what was a child custody case to the county chancery court, as the mother's allegation that her 10-month-old child was in need of supervision was insufficient to show the child was in need of supervision under the relevant statute, Miss. Code Ann. § 43-21-105(k), which required a child in need of supervision to have at least reached his seventh birthday; since there were also no allegations of abuse or neglect of the child, the case was a child custody case that fell under the jurisdiction of the county chancery court. In re L.D.M, 910 So. 2d 522, 2005 Miss. LEXIS 94 (Miss. 2005).

While partnership assets may be tangible property, the partnership interest being litigated upon dissolution of the partnership constitutes intangible personal property and, therefore, an action to dissolve a partnership is an action over personal property; thus, a chancery court may properly hear a case for the dissolution and accounting of a partnership. Crowe v. Smith, 603 So. 2d 301, 1992 Miss. LEXIS 327 (Miss. 1992).

If any aspect of a case is within its subject matter jurisdiction, the chancery court has authority to hear and adjudge any non-chancery pure law claims via pendent jurisdiction. Johnson v. Hinds County, 524 So. 2d 947, 1988 Miss. LEXIS 194 (Miss. 1988).

Landowners, joining in equity suit to abate common nuisance and for damages, have right to have their controversy adjudicated in court of competent jurisdiction, and chancery court in which suit was brought has jurisdiction to proceed, after settlement of suit on abatement of nuisance issue, to full and complete determination of all remaining issues, even though they may cover only legal rights and require granting of none but legal remedies. McClendon v. Mississippi State Highway Com., 205 Miss. 71, 38 So. 2d 325, 1949 Miss. LEXIS 413 (Miss. 1949).

Const. of 1890 § 162, providing that all causes that may be brought in chancery court whereof the circuit court has exclusive jurisdiction shall be transferred to the circuit court, is mandatory. Murphy v. Meridian, 103 Miss. 110, 60 So. 48, 1912 Miss. LEXIS 143 (Miss. 1912).

Const. of 1890 § 147 does not apply where court below declines jurisdiction. It applies only where trial court erroneously assumes jurisdiction. Mitchell v. Bank of Indianola, 98 Miss. 658, 54 So. 87, 1910 Miss. LEXIS 107 (Miss. 1910).

By virtue of § 160 of the Constitution, the chancery court has jurisdiction as to cases within paragraph "f" of § 159 of the Constitution to try legal as well as equitable titles. Woods v. Riley, 72 Miss. 73, 18 So. 384, 1894 Miss. LEXIS 143 (Miss. 1894).

Equity may afford auxiliary aid where a law court first acquires jurisdiction; it may afford complete relief where it first acquires jurisdiction, though the titles and rights involved are of a legal, as distinguished from an equitable, character. Woods v. Riley, 72 Miss. 73, 18 So. 384, 1894 Miss. LEXIS 143 (Miss. 1894).

Section 160 of the Constitution reversed the former relations of the courts in which the circuit court possessed general jurisdiction and was the repository of the power to administer legal remedies, and the chancery court had jurisdiction of certain designated matters and where there was not a full, adquate and complete remedy at law. Now by § 156 of the Constitution the circuit court has original jurisdiction "in all matters, civil and criminal, in this state not vested by this Constitution in some other court." Whitney v. Hanover Nat'l Bank, 71 Miss. 1009, 15 So. 33, 1894 Miss. LEXIS 4 (Miss. 1894).

The legislature may confer on the chancery court jurisdiction of legal matters in aid of its authority over the principal matter of equitable negligence. Buie v. Pollock, 55 Miss. 309, 1877 Miss. LEXIS 137 (Miss. 1877).

As a matter of necessity, in order to ascertain the boundaries of the jurisdiction of the courts, reference must be had to the system of jurisprudence prevalent at the time the Constitution was adopted, and to the legislation of the state with a view to which the framers of the Constitution must be understood to have acted. Servis v. Beatty, 32 Miss. 52, 1856 Miss. LEXIS 146 (Miss. 1856).

50. Accounting.

Equity may compel accounting of the perquisites and emoluments of the sheriff's office in suit of a rightful claimant, although incidentally determination of the title to the office may be necessary. Baker v. Nichols, 111 Miss. 673, 72 So. 1, 1916 Miss. LEXIS 366 (Miss. 1916).

51. Assignment.

Court has no jurisdiction under Code 1892 § 117 (Code 1906 § 120), except where assignment for creditors is general. Lowenstein v. Hooker, 71 Miss. 102, 14 So. 531, 1893 Miss. LEXIS 192 (Miss. 1893).

52. Attachment.

Code of 1906 § 536 giving chancery court jurisdiction of attachments does not violate Const. 1890 § 159 ¶f. Dinwiddie v. Glass, 111 Miss. 449, 71 So. 745, 1916 Miss. LEXIS 319 (Miss. 1916).

53. Creditors' bills to set aside fraudulent conveyances.

The court can exercise jurisdiction, as provided by § 503 Code 1892 (Code 1906 § 553), to set aside conveyances of other devices made to defraud creditors only in behalf of creditors whose debts are due when the bill is filed. Browne v. Hernsheim, 71 Miss. 574, 14 So. 36, 1893 Miss. LEXIS 120 (Miss. 1893).

Jurisdiction of bills by creditors without judgment whose debts are due to set aside fraudulent conveyances and devices to hinder and delay creditors is expressly conferred by § 159 Const. 1890. McBride v. Adams, 70 Miss. 716, 12 So. 699 (Miss. 1893).

Such jurisdiction is not affected by § 31 of the Constitution declaring that the right of trial by jury shall remain inviolate. McBride v. Adams, 70 Miss. 716, 12 So. 699 (Miss. 1893).

54. Land titles.

Original jurisdiction to make conclusive and final adjudication of title to land rests alone with circuit and chancery courts, and to a limited extent with the county courts. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Supreme Court, circuit courts, chancery courts and county courts, when acting on appeal from a special possessory court of a justice or justices of peace, have only such jurisdiction to adjudicate regarding title to land as is vested in special court from which appeal was taken. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Const. 1890 § 159 par. f and § 160 confer on chancery court jurisdiction to try legal as well as equitable titles. Keystone Lumber Yard v. Yazoo & M. V. R. Co., 96 Miss. 116, 50 So. 445, 1909 Miss. LEXIS 11 (Miss. 1909).

The court has no jurisdiction to reform a tax collector's deed. Boone v. Dulion, 80 Miss. 584, 32 So. 1, 1902 Miss. LEXIS 283 (Miss. 1902).

55. Liens.

Where debt to bank was assumed by grantees in deed to husband and wife, court held it was only equitable and just that the one-half interest of husband in property be charged with an equitable lien to secure one-half of the amount assumed. Prater v. Prater, 208 Miss. 59, 44 So. 2d 538, 1950 Miss. LEXIS 229 (Miss. 1950).

Assignee of note and deed of trust covering machinery and equipment in manufacturing plant who files suit in chancery court for foreclosure of deed of trust, for appointment of receivor, for adjudication of priorities of liens and moves to abate prior action filed by mechanic to enforce his lien, must abide by equities of case resulting from fact that mechanic's lien had been created in favor of mechanic without notice of existence of prior executed note containing agreement to subsequently give deed of trust on same property to which mechanic's lien attached. Buckwalter v. McElroy, 205 Miss. 54, 38 So. 2d 317, 1949 Miss. LEXIS 411 (Miss. 1949).

But the equity of an accounting is sufficient as basis for the jurisdiction of a chancery court in cases of mechanics' and materialmen's liens. W. M. Carter Lumber Co. v. Deopp, 110 Miss. 591, 70 So. 701, 1915 Miss. LEXIS 84 (Miss. 1915).

56. Mutual accounts.

The court has no jurisdiction under § 161 of the Constitution of 1890 conferring upon it concurrent jurisdiction with the circuit court of "suits involving inquiry into matters of mutual accounts" of an account containing items of debit and credit and items in favor of defendant, being mere payments, where it did not appear that he had an independent account against the complainant. George D. Barnard & Co. v. Sykes, 72 Miss. 297, 18 So. 450, 1894 Miss. LEXIS 147 (Miss. 1894).

57. Official and fiduciary bonds.

Chancery court had jurisdiction under § 161 of the Constitution of suit by district attorney on behalf of county or district thereof against member of board of supervisors of the district and his surety to recover loss resulting from unauthorized use of construction equipment for benefit of private individuals. Moreover, additional basis for chancery jurisdiction, even apart from this constitutional section, existed in prayer for discovery as to the loss, expenses and outlays incurred by rendition of the unauthorized services to the some fourteen named citizens of the county. Shumpert v. Lee County, 197 Miss. 513, 20 So. 2d 82, 1944 Miss. LEXIS 316 (Miss. 1944).

Chancery court has jurisdiction of suit on bond of secretary and treasurer of board of levee commissioners. Adams v. Williams, 97 Miss. 113, 52 So. 865, 1910 Miss. LEXIS 283 (Miss. 1910).

Section 161 of the Const. of 1890, conferring jurisdiction upon the chancery court of suits on "bonds of fiduciaries" embraces only technical trusts, where bond is required by law. George D. Barnard & Co. v. Sykes, 72 Miss. 297, 18 So. 450, 1894 Miss. LEXIS 147 (Miss. 1894).

Section 161 Const. 1890, giving concurrent jurisdiction "of suits on bonds of public officers for failure to account for money, or property received or wasted, or lost by neglect" does not give the chancery court jurisdiction of a suit on the bond of a sheriff for damages because of an excessive attachment of personal property, a part of which is destroyed in his custody. Cazeneuve v. Curell, 70 Miss. 521, 13 So. 32, 1893 Miss. LEXIS 47 (Miss. 1893).

58. Personal decrees.

The court has no jurisdiction in a foreign attachment under §§ 486-487 Code 1892 (§§ 536, 537 Code 1906), to render a personal decree against the non-resident defendant. Rothrock Const. Co. v. Port Gibson Mfg. Co., 80 Miss. 517, 32 So. 116, 1902 Miss. LEXIS 298 (Miss. 1902).

Section 592 Code 1892 (Code 1906 § 643), authorizing personal decrees for balance, after sale of mortgaged property, and § 147 Const. 1890, prohibiting reversals from certain errors of jurisdiction by analogy support such right to adjudicate. Atkinson v. Felder, 78 Miss. 83, 29 So. 767, 1900 Miss. LEXIS 175 (Miss. 1900).

59. Receivers.

Neither the court nor chancellor in vacation has jurisdiction to appoint a receiver until the bill is filed and the cause is pending. Barber v. Manier, 71 Miss. 725, 15 So. 890, 1894 Miss. LEXIS 27 (Miss. 1894); Smith v. Ely & Walker Dry Goods Co., 79 Miss. 266, 30 So. 653, 1901 Miss. LEXIS 54 (Miss. 1901).

All distinction between equity and common law jurisdiction, after it has been entertained, being swept away by § 147 of the Constitution, where an independent creditor's bill for the preservation of the assets taken control of by the chancery court under such void appointment has been filed, a decree in such suit appointing a new receiver, even if erroneous, is not assailable collaterally as being void for want of jurisdiction. Section 160 of the Constitution dispensing with the necessity for first exhausting legal remedies, is also invoked by the court in this case. Whitney v. Hanover Nat'l Bank, 71 Miss. 1009, 15 So. 33, 1894 Miss. LEXIS 4 (Miss. 1894).

Such proceeding is not protected by § 147 of the Const., not being a "cause" within its meaning. Whitney v. Hanover Nat'l Bank, 71 Miss. 1009, 15 So. 33, 1894 Miss. LEXIS 4 (Miss. 1894).

The court has no jurisdiction to appoint a receiver for a bank on its ex parte application, though it is insolvent. Whitney v. Hanover Nat'l Bank, 71 Miss. 1009, 15 So. 33, 1894 Miss. LEXIS 4 (Miss. 1894).

60. Penalties.

Laws 1910 ch. 134 giving chancery court concurrent jurisdiction of suits for penalties for violation thereof does not violate Const. 1890 § 159. State ex rel. Attorney Gen. v. Marshall, 100 Miss. 626, 56 So. 792, 1911 Miss. LEXIS 64 (Miss. 1911).

The court is without jurisdiction ordinarily to enforce penalties. Mississippi R. Com. v. Gulf & S. I. R. Co., 78 Miss. 750, 29 So. 789, 1901 Miss. LEXIS 141 (Miss. 1901).

Under our Constitution the legislature cannot confer jurisdiction upon chancery courts of bills for the mere purpose of recovering penalties. Mississippi R. Com. v. Gulf & S. I. R. Co., 78 Miss. 750, 29 So. 789, 1901 Miss. LEXIS 141 (Miss. 1901).

61. Miscellaneous.

Where suit, brought in the chancery court for an injunction to abate a nuisance, failed on an injunction issue, the chancellor erred in not deciding the issue of damages. Shaw v. Owen, 229 Miss. 126, 90 So. 2d 179, 1956 Miss. LEXIS 593 (Miss. 1956).

Suit for damages over laying of sidewalk due to change of grading is not within Const. 1890 § 161. Murphy v. Meridian, 103 Miss. 110, 60 So. 48, 1912 Miss. LEXIS 143 (Miss. 1912).

Sec. 4286 Code 1892 (Code 1906 § 4838), authorizing the railroad commission to apply to the circuit or chancery court for aid in enforcing obedience to their process, orders, decisions, and determinations, does not affect their jurisdiction, but merely directs resort to them according to their established jurisdiction. Mississippi R. Com. v. Gulf & S. I. R. Co., 78 Miss. 750, 29 So. 789, 1901 Miss. LEXIS 141 (Miss. 1901).

A chancery court has no jurisdiction to assess and collect the taxes authorized under the act of March 17, 1871, creating levee board No. 1, but it may enforce the trust created by it in favor of the bondholders-creditors of the board. Woodruff v. State, 77 Miss. 68, 25 So. 483, 1899 Miss. LEXIS 48 (Miss. 1899).

The court has jurisdiction, pending an appeal from a decree against one seeking a cancellation of his adversary's title, of a bill filed by him for an injunction against cutting and removing trees, the defendant being insolvent and the timber constituting its chief value. The jurisdiction is auxiliary or ancillary within § 160 of the Constitution to that conferred by § 1833 Code 1880 (§ 500 Code 1892; § 550 Code 1906), in conjunction with paragraph "f" of § 159 of the Constitution. Woods v. Riley, 72 Miss. 73, 18 So. 384, 1894 Miss. LEXIS 143 (Miss. 1894).

In appointing guardians the court exercises general, and not limited and inferior, jurisdiction, and its decree appointing a clerk cannot be collaterally attacked. Ames v. Williams, 72 Miss. 760, 17 So. 762, 1895 Miss. LEXIS 28 (Miss. 1895).

OPINIONS OF THE ATTORNEY GENERAL

The County Attorney has no obligation to represent a petitioner in a commitment proceeding in chancery court. Grant, Dec. 5, 1997, A.G. Op. #97-0758.

RESEARCH REFERENCES

ALR.

Availability of equitable remedy of accounting between principal and agent. 3 A.L.R.2d 1310.

Injunction by state court against action in court of another state. 6 A.L.R.2d 896.

Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services. 7 A.L.R.2d 1166.

Capacity of cotenant to maintain suit to set aside conveyance of interest of another cotenant because of fraud, undue influence, or incompetency. 7 A.L.R.2d 1317.

Specific performance or injunctive relief against breach of contract, other than lease or agreement therefor, or contract for services, terminable by one party but not the other. 8 A.L.R.2d 1208.

Change of conditions after execution of contract or option for sale of real property as affecting right to specific performance. 11 A.L.R.2d 390.

Punitive damages: power of equity court to award. 58 A.L.R.4th 844.

Am. Jur.

27A Am. Jur. 2d, Equity §§ 4 et seq.

CJS.

30A C.J.S., Equity §§ 9 et seq.

§ 9-5-83. Court may determine all matters in estates administered.

The court in which a will may have been admitted to probate, letters of administration granted, or a guardian may have been appointed, shall have jurisdiction to hear and determine all questions in relation to the execution of the trust of the executor, administrator, guardian, or other officer appointed for the administration and management of the estate, and all demands against it by heirs at law, distributees, devisees, legatees, wards, creditors, or others; and shall have jurisdiction of all cases in which bonds or other obligations shall have been executed in any proceeding in relation to the estate, or other proceedings, had in said chancery court, to hear and determine upon proper proceedings and evidence, the liability of the obligors in such bond or obligation, whether as principal or surety, and by decree and process to enforce such liability.

HISTORY: Codes, 1871, § 976; 1880, § 1834; 1892, § 504; 1906, § 554; Hemingway's 1917, § 314; 1930, § 352; 1942, § 1263.

Cross References — Registering claims against estates, see § 9-5-173.
Docketing estate matters, see § 9-5-203.
Limitation of express trusts in equity matters, see § 15-1-39.
Proceedings in escheat matters, see § 89-11-11.
Administration of estates of decedents, generally, see §§ 91-7-1 et seq.
Guardianships, generally, see §§ 93-13-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application generally.
3. Jurisdiction in particular matters.
4. Suits by or against estate.
5. Suits on bond.
6. Parties.
7. Venue.

1. Validity.

The statute is constitutional. Bank of Mississippi v. Duncan, 52 Miss. 740, 1876 Miss. LEXIS 287 (Miss. 1876); Brunini v. Pera, 54 Miss. 649, 1877 Miss. LEXIS 69 (Miss. 1877).

2. Construction and application generally.

This section [Code 1942 § 1263] is full, specific and definite, and authorizes the court at which letters of administration or of guardianship have been granted, to hear and determine all questions in relation to the execution of the trust of the executor, administrator, guardian or other officer appointed for the administration and management of all the estate, and all demands against it by heirs at law, distributees, devisees, legatees, wards, creditors or others. Newsom v. Federal Land Bank, 184 Miss. 318, 185 So. 595, 1939 Miss. LEXIS 38 (Miss. 1939).

The statute contemplates that the chancery court in which the guardianship is being administered shall draw to itself the decision and control of all litigations affecting the guardianship, between the wards and the guardian, or between third persons and the guardian, or against the ward though the guardian. Newsom v. Federal Land Bank, 184 Miss. 318, 185 So. 595, 1939 Miss. LEXIS 38 (Miss. 1939).

The chancellor, in the administration of estates and guardianships, may supervise and inquire into the management; he need not personally conduct the inquiry or consult witnesses and prepare the papers necessary to such supervision, but may appoint such assistants as may be required for the proper development and conduct of such cases, under his supervision; and the chancery court has full jurisdiction of proceedings against administrators, executors or guardians and sureties on their bonds to enforce claims or other liabilities against them, in his own court. Newsom v. Federal Land Bank, 184 Miss. 318, 185 So. 595, 1939 Miss. LEXIS 38 (Miss. 1939).

Chancery court has full jurisdiction of proceedings against administrators and surety, to enforce claim allowed against estate. Lawson v. Dean, 144 Miss. 309, 109 So. 801, 1926 Miss. LEXIS 361 (Miss. 1926).

The statute applies in favor of distributees, even after a formal settlement by the administrator. Brunini v. Pera, 54 Miss. 649, 1877 Miss. LEXIS 69 (Miss. 1877).

3. Jurisdiction in particular matters.

Beneficiaries' complaint focused on the administration of the trust, and they had labeled their claims as negligence, breach of contract, breach of fiduciary duty, and gross negligence; however, the bank's actions or inactions that were at issue arose solely from its capacity as trustee and any duty it might have had arose from its appointment as trustee, such that because the action sought to interpret the trustee's obligations under the terms of the trust, the trust was under the exclusive jurisdiction of the Warren County Chancery Court and had been since its inception. Trustmark Nat'l Bank v. Johnson, 865 So. 2d 1148, 2004 Miss. LEXIS 185 (Miss. 2004).

The chancery court had jurisdiction of an executor's action for construction of a will, a determination of the identity of the legatees, and a direction as to the distribution of the residual estate. Cain v. Dunn, 241 So. 2d 650, 1970 Miss. LEXIS 1351 (Miss. 1970).

Where a will was admitted to probate in the county where the testatrix had had her residence and citizenship, and where the executor of the will was appointed and qualified, the chancery court thereof had jurisdiction and venue of an action to construe the will even though it involved title to real property located in another county. Hutton v. Hutton, 233 Miss. 458, 102 So. 2d 424, 1958 Miss. LEXIS 404 (Miss. 1958).

Jurisdiction of all demands by creditors or others against an estate of a decedent is vested in chancery court of county in which letters of administration are granted. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

No court other than chancery court in which letters of administration has been granted has jurisdiction over petition for sale of decedent's nonexempt lands for payment of decedent's debts. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

Chancery court having jurisdiction of testamentary trust funds, bank acting as trustee and executor, and of the plaintiff has full jurisdiction to determine issues in respect to alleged improper handling of the trust funds. Garrett v. First Nat'l Bank & Trust Co., 153 F.2d 289, 1946 U.S. App. LEXIS 1914 (5th Cir. Miss. 1946).

Court of chancery has inherent power to remove a trustee for good cause, such power being incidental to the court's paramount duty to see that trusts are properly executed. Yeates v. Box, 198 Miss. 602, 22 So. 2d 411, 1945 Miss. LEXIS 232 (Miss. 1945).

Will vesting right in trustees to determine when the trust is to be closed does not put arbitrary power in their hands, but, at most, only the authority for exercise of sound discretion, and bill in equity seeking review of such discretion may be maintained. Yeates v. Box, 198 Miss. 602, 22 So. 2d 411, 1945 Miss. LEXIS 232 (Miss. 1945).

While chancery court will not substitute its judgment for that of a trustee, it will, whenever the circumstances require, review the exercise of discretion given to a trustee to decide whether it is reasonable or unreasonable. Yeates v. Box, 198 Miss. 602, 22 So. 2d 411, 1945 Miss. LEXIS 232 (Miss. 1945).

Chancery courts may remove trustee irrespective of his domicile. Nutt v. State, 96 Miss. 473, 51 So. 401, 1910 Miss. LEXIS 171 (Miss. 1910).

Supreme Court will not interfere with removal of trustee by the chancery court for misconduct unless it be palpably unjust. Nutt v. State, 96 Miss. 473, 51 So. 401, 1910 Miss. LEXIS 171 (Miss. 1910).

The chancery court in which a will is probated has jurisdiction to decree the sale of lands, at the suit of the legatee, though the land lie and all defendants reside out of the county. Turner v. Turner, 57 Miss. 775, 1880 Miss. LEXIS 58 (Miss. 1880).

The chancery court in which a guardian is subsequently appointed has jurisdiction to ascertain proper compensation to those entitled thereto from the ward's estate. Epperson v. Nugent, 57 Miss. 45, 1879 Miss. LEXIS 11 (Miss. 1879).

4. Suits by or against estate.

No suit can be maintained under this statute without application having been presented to the court in which the guardianship is pending, setting up some reasonable necessity for the bringing of such suit. Newsom v. Federal Land Bank, 184 Miss. 318, 185 So. 595, 1939 Miss. LEXIS 38 (Miss. 1939).

The statute does not authorize a suit by an administrator against a person who bid off the same for the price of goods sold by the administrator under decree directing the sale to be for cash. Pate v. Taylor, 66 Miss. 97, 5 So. 515, 1888 Miss. LEXIS 67 (Miss. 1888).

Ex contractu creditors may sue in chancery without judgments. Hunt v. Potter, 58 Miss. 96, 1880 Miss. LEXIS 101 (Miss. 1880); Brasfield v. French, 59 Miss. 632, 1882 Miss. LEXIS 176 (Miss. 1882).

The statute enables a judgment-creditor of an estate to sue in equity. Whitfield & Billups v. Evans, 56 Miss. 488, 1879 Miss. LEXIS 150 (Miss. 1879); Clopton v. Haughton, 57 Miss. 787, 1880 Miss. LEXIS 61 (Miss. 1880).

5. Suits on bond.

Executors de son tort of a deceased surety on the bond of an administrator may be sued in equity with the principal thereon. Buie v. Pollock, 55 Miss. 309, 1877 Miss. LEXIS 137 (Miss. 1877).

6. Parties.

A chancellor is justified in dismissing a petition filed by life tenants under a testamentary trust for its modification where process has not been served on the remaindermen. Reedy v. Johnson's Estate, 200 Miss. 205, 26 So. 2d 685, 1946 Miss. LEXIS 284 (Miss. 1946).

Judgment creditors of the heirs of an intestate were proper parties to a proceeding involving the final account of the administrator. Stone v. Townsend, 190 Miss. 547, 1 So. 2d 237, 1941 Miss. LEXIS 81 (Miss. 1941).

7. Venue.

Where a will was admitted to probate in the county where the testatrix had had her residence and citizenship, and where the executor of the will was appointed and qualified, the chancery court thereof had jurisdiction and venue of an action to construe the will even though it involved title to real property located in another county. Hutton v. Hutton, 233 Miss. 458, 102 So. 2d 424, 1958 Miss. LEXIS 404 (Miss. 1958).

Chancery Court of county in which nonexempt land of decedent is located does not have jurisdicition of bill by creditor seeking lien against land for payment of his claims, when decedent's estate is in process of administration in another county. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

Where testator bequeathed $1,000 to his brother and directed that if any part thereof remained unused by him at his death, it should become the property of testator's nephew, and testator's brother died within a month of the testator, the chancery court administering the estate of the testator and not the chancery court administering the estate of testator's brother was the proper court to decide to whom the legacy belonged. Rose v. Bennett, 193 Miss. 878, 11 So. 2d 307, 1943 Miss. LEXIS 10 (Miss. 1943).

Under this section [Code 1942 § 1263] jurisdiction of all demands by creditors or others against an estate of a decedent is vested in the chancery court of the county in which letters of administration were granted, even though there are other defendants to the suit, some of whom may reside or be found in county other than that in which the letters of administration were granted. State ex rel. Gully v. Massachusetts Bonding & Ins. Co., 187 Miss. 66, 191 So. 285, 1939 Miss. LEXIS 79 (Miss. 1939).

An action to recover on a public official's bond against the principal's executrix and surety was properly dismissed for want of jurisdiction in the chancery court, where the action was brought in the county in which the surety could be served with process instead of the county in which letters of administration had been granted. State ex rel. Gully v. Massachusetts Bonding & Ins. Co., 187 Miss. 66, 191 So. 285, 1939 Miss. LEXIS 79 (Miss. 1939).

RESEARCH REFERENCES

ALR.

Revocation or withdrawal of election to take under or against will. 71 A.L.R.2d 942.

Appealability of probate orders allowing or disallowing claims against estate. 84 A.L.R.4th 269.

Am. Jur.

27A Am. Jur. 2d, Equity §§ 4, 37, 52.

CJS.

30A C.J.S., Equity §§ 33-71.

§ 9-5-85. Court may summon all persons and punish for contempt.

The chancery court shall have power to issue a summons for any person, or subpoena for any witness, whose appearance in court may be deemed necessary for any purpose, whether such party or witness reside in the same or any other county. It shall be the duty of the party summoned or subpoenaed, to attend the court according to the command of the process; and if it be necessary or proper to enforce the appearance of the party, the court, on the return of the process executed and failure to appear, may issue an attachment, and may fine the party when brought in for a contempt. If a witness before the court shall refuse to testify, the court may commit such witness for contempt of the court.

HISTORY: Codes, 1871, § 980; 1880, § 1835; 1892, § 506; 1906, § 557; Hemingway's 1917, § 317; 1930, § 366; 1942, § 1277.

Cross References — Power of courts to punish contempt, see § 9-1-17.

Process, notice and publication generally, see §§ 13-3-1 et seq.

Disobedience of final order entered in consumer protection proceeding constituting contempt, see § 75-24-17.

RESEARCH REFERENCES

ALR.

Intoxication of witness or attorney as contempt of court. 46 A.L.R.4th 238.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous. 12 A.L.R.2d 1059.

Am. Jur.

17 Am. Jur. 2d, Contempt §§ 23, 37 et seq.

CJS.

17 C.J.S., Contempt §§ 65, 70, 76, 77 et seq.

§ 9-5-87. Power to punish for violation of injunction.

The chancery court, or the chancellor in vacation, or judge granting the writ, shall have power to punish any person for breach of injunction, or any other order, decree, or process of the court, by fine or imprisonment, or both, or the chancellor or judge granting the writ may require bail for the appearance of the party at the next term of the court to answer for the contempt; but such person shall be first cited to appear and answer. And any person so punished by order of the chancellor in vacation, may on five (5) days' notice to the opposite party, apply to a judge of the Supreme Court, who, for good cause shown, may supersede the punishment until the meeting of the said chancery court.

At the discretion of the court, any person found in contempt for failure to pay child support and imprisoned therefor may be referred for placement in a state, county or municipal restitution, house arrest or restorative justice center or program, provided such person meets the qualifications prescribed in Section 99-37-19.

HISTORY: Codes, 1880, § 1846; 1892, § 509; 1906, § 560; Hemingway's 1917, § 320; 1930, § 367; 1942, § 1278; Laws, 2009, ch. 367, § 2, eff from and after July 1, 2009.

Cross References — Punishment for violation of injunction against nuisances, see § 95-3-19.

Court's authority in proper cases to adjudge party in contempt, see Miss. R. Civ. P. 70.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Matters within power to punish for contempt.
3. Contempt proceedings.
4. —Evidence.
5. —Judgment or decree.
6. Appeal.

1. In general.

Contempt findings were reversed, based on lack of jurisdiction over various named defendants, where there was failure to properly issue service of process, which is required before named person becomes party to motion; knowledge by way of media is not sufficient to bring person before court. Mississippi Asso. of Educators v. Trustees of Jackson Municipal Separate School Dist., 510 So. 2d 123, 1987 Miss. LEXIS 2439 (Miss. 1987).

Criminal contempt is punishment for a past offense, is quasi criminal, and a defendant is presumed innocent until proved guilty beyond a reasonable doubt, and the essence of the offense is that a defendant wilfully, maliciously, and contumaciously has refused to comply with the decree of court. Langford v. Langford, 253 Miss. 483, 176 So. 2d 266, 1965 Miss. LEXIS 1006 (Miss. 1965).

A statute empowering the court to punish any person for breach of any decree or order of the court, by fine or imprisonment, or both, provides for criminal contempt, while a statute providing that if any person refused to obey or perform any order or judgment of the court, the court shall have power to fine and imprison him until the order or judgment is complied with, provides for civil or quasi criminal contempt; the order for imprisonment in the former case is for a past and completed act or omission, is punitory and must be suffered, and its purpose is to preserve the power and vindicate the dignity of the court; in the latter case the punishment is coercive and the contemnor may discharge himself by compliance with the terms of the decree violated, and its purpose is to compel obedience to its decrees. Evans v. Evans, 193 Miss. 468, 9 So. 2d 641, 1942 Miss. LEXIS 116 (Miss. 1942).

2. Matters within power to punish for contempt.

Contemnor failed to comply with divorce decree, and a chancellor did not commit manifest error or abuse the chancery court's discretion by incarcerating the contemnor, as the chancellor's decision was supported by the record, which included the chancellor's findings that the contemnor was not credible; further, the divorce decree was not ambiguous, so the contemnor's argument that the contemnor could not obey because of the decree's alleged vagueness was rejected. Stribling v. Stribling, 960 So. 2d 556, 2007 Miss. App. LEXIS 1 (Miss. Ct. App. 2007).

Individual held in prison for civil contempt was improperly held without being afforded opportunity to prove present inability to pay. While defendant may avoid judgment of contempt by establishing that he is without present ability to discharge obligation, he has burden of proving his inability to pay, and such showing must be made with particularity and not in general terms. Where contemnor is unable to pay, even if that present inability is due to his misconduct, imprisonment cannot accomplish purpose of civil contempt decree, which is to compel obedience. Jones v. Hargrove, 516 So. 2d 1354, 1987 Miss. LEXIS 2950 (Miss. 1987).

The chancery court does not have the power to punish for an injunction prohibiting gambling operations under Code 1942 § 2562, which covers penalty where none fixed elsewhere by statute, but under this section. Alexander v. State, 210 Miss. 517, 49 So. 2d 890, 1951 Miss. LEXIS 290 (Miss. 1951).

Statute (Code 1942 § 2646), providing that any place where liquors are found, kept or possessed shall be deemed to be a common nuisance and may be abated by writ of injunction issued out of a court of equity upon a bill filed in the name of the state, may appropriately be taken in connection with this section, [Code 1942 § 1278] which is declaratory of the power of the chancery court or chancellor in vacation to punish any person for violation of an injunction as for a contempt. Murphy v. State, 202 Miss. 890, 32 So. 2d 875, 1947 Miss. LEXIS 352 (Miss. 1947).

The power to punish for contempt in vacation hereunder is not confined to injunction cases but expressly includes "any other order, decree or process of the court," and, therefore, includes the enforcement of an alimony decree in vacation. Johnson v. Johnson, 189 Miss. 561, 198 So. 308, 1940 Miss. LEXIS 145 (Miss. 1940).

Husband wilfully and deliberately ignoring orders of the court to pay alimony was properly sentenced to confinement until alimony was paid. Millis v. State, 106 Miss. 131, 63 So. 344, 1913 Miss. LEXIS 115 (Miss. 1913).

A restraining order is foreign to the practice in this state and such an order without bond is a nullity; Wherefore defendant charged with violating a restraining order issued upon an amended bill can only be adjudged guilty of violating such void order, and their guilt cannot be predicated on a violation of an injunction issued upon the original bill. Castleman v. State, 94 Miss. 609, 47 So. 647, 1909 Miss. LEXIS 317 (Miss. 1909).

3. Contempt proceedings.

Trial court did not have sufficient facts before it to properly issue contempt order where Supreme Court's review of record revealed no clear and explicit evidence that order placing defendants in contempt of court was well taken, and judgment of conviction did not contain material facts known to court constituting contempt. Mississippi Asso. of Educators v. Trustees of Jackson Municipal Separate School Dist., 510 So. 2d 123, 1987 Miss. LEXIS 2439 (Miss. 1987).

In determining whether a person cited for contempt has the right to a jury trial, which determination must be based on whether the contempt is to be treated as a serious or a petty offense, the court must look to the maximum sentence which could be imposed under the statute if a maximum penalty has been set, and if no maximum penalty has been set, the court should look to the penalty actually imposed as the best evidence of the seriousness of the offense. McGowan v. State, 258 So. 2d 801, 1972 Miss. LEXIS 1516 (Miss.), cert. denied, 409 U.S. 1006, 93 S. Ct. 430, 34 L. Ed. 2d 298, 1972 U.S. LEXIS 632 (U.S. 1972).

A defendant who, in a trial without a jury was found guilty of contempt for violating an injunction prohibiting him from conducting the unlawful business of keeping and selling intoxicating liquor on certain premises, and was sentenced to 5 months imprisonment and a fine of $750, was not entitled to a jury trial, but was entitled to have his fine reduced to $500. McGowan v. State, 258 So. 2d 801, 1972 Miss. LEXIS 1516 (Miss.), cert. denied, 409 U.S. 1006, 93 S. Ct. 430, 34 L. Ed. 2d 298, 1972 U.S. LEXIS 632 (U.S. 1972).

Since the chancellor had power both in vacation and term time to hear and determine a petition alleging that the appellant was in contempt of the court's injunction, the chancellor did not divest himself of the power to hear the matter in vacation by a citation requiring appellant to execute a bond, where neither the citation nor the bond required appellant to appear at the next term of court, but required his appearance on the vacation date named in the order for citation, and it further appeared that the appellant never executed the bond in question. Livaudais v. Mississippi E. R. Co., 228 Miss. 576, 89 So. 2d 588, 1956 Miss. LEXIS 548 (Miss. 1956).

Chancery court has authority to hear and determine petitions for contempt in vacation. Gordon v. Gordon, 196 Miss. 476, 17 So. 2d 191, 1944 Miss. LEXIS 217 (Miss. 1944).

For a conviction for criminal contempt, not only the procedure, but the proof, must conform to practice in criminal cases. Evans v. Evans, 193 Miss. 468, 9 So. 2d 641, 1942 Miss. LEXIS 116 (Miss. 1942).

Contempt proceedings against executor for failure to pay widow year's support theretofore allowed her by court were properly held by chancellor in vacation in another county. Prentiss v. Turner, 170 Miss. 496, 155 So. 214, 1934 Miss. LEXIS 158 (Miss. 1934).

4. —Evidence.

In civil contempt cases the weight and sufficiency of the evidence must be clear and convincing, and not beyond a reasonable doubt, as required in criminal cases. Masonite Corp. v. International Woodworkers of America, 206 So. 2d 171, 1967 Miss. LEXIS 1242 (Miss. 1967).

Where evidence is insufficient to show beyond a reasonable doubt that a defendant deliberately and contumaciously intended to defy the power and dignity of the court in failing to comply with the alimony and child support provisions of a divorce decree, his imprisonment for criminal contempt is not justified. Langford v. Langford, 253 Miss. 483, 176 So. 2d 266, 1965 Miss. LEXIS 1006 (Miss. 1965).

Regardless of the rule as to the essentials of a prima facie case in civil contempt, mere proof of failure to pay alimony without more is not sufficient to make a case of proof beyond a reasonable doubt of an intent deliberately and contumaciously to defy the power and dignity of the court justifying imprisonment as for criminal contempt. Evans v. Evans, 193 Miss. 468, 9 So. 2d 641, 1942 Miss. LEXIS 116 (Miss. 1942).

In a proceeding for criminal contempt for failure of a husband, defendant in a divorce suit, to obey a decree ordering the payment of alimony and solicitor's fees, a prima facie case of "wilful, deliberate and contumacious refusal" was not established, where the only evidence was the testimony of the wife as to the mere fact that the alimony had not been paid. Evans v. Evans, 193 Miss. 468, 9 So. 2d 641, 1942 Miss. LEXIS 116 (Miss. 1942).

Absence of violated writ of injunction, with sheriff's return, from record in contempt proceeding, held immaterial, where counsel's agreement disclosed that writ was served on contemner. Hanna v. State, 169 Miss. 314, 153 So. 371, 1934 Miss. LEXIS 57 (Miss. 1934).

Evidence held not sufficient to show contempt for interference with decree awarding custody of minor child. Magee v. State, 99 Miss. 83, 54 So. 802, 1910 Miss. LEXIS 18 (Miss. 1910).

5. —Judgment or decree.

Only judgment or decree chancellor was authorized to render in proceeding for contempt in violating injunction against sale of gasoline without permit and payment of excise tax was one of fine, imprisonment, or both, for contemner's past conduct. Hanna v. State, 169 Miss. 314, 153 So. 371, 1934 Miss. LEXIS 57 (Miss. 1934).

6. Appeal.

Where the employer's petition for citation of contempt for violation of a temporary injunction charged that the labor union and its officials had failed and refused to direct the union members to cease participating in a work stoppage and to return to work, the charge was one of civil contempt and the employer was entitled to appeal from a decree of the chancery court which found the defendants were not guilty. Masonite Corp. v. International Woodworkers of America, 206 So. 2d 171, 1967 Miss. LEXIS 1242 (Miss. 1967).

Decree holding one guilty of contempt and providing punishment if he does not comply with the order of the court within a certain time is interlocutory and cannot be appealed from. Nutt v. State, 95 Miss. 422, 49 So. 145, 1909 Miss. LEXIS 259 (Miss. 1909).

RESEARCH REFERENCES

ALR.

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous. 12 A.L.R.2d 1059.

Divorce: propriety of using contempt proceeding to enforce property settlement award or order. 72 A.L.R.4th 298.

Am. Jur.

42 Am. Jur. 2d, Injunctions §§ 235, 314-318.

§ 9-5-89. Guardian ad litem; appointment and compensation; effect of failure to appoint.

The court may appoint a guardian ad litem to any infant or defendant of unsound mind, and allow him suitable compensation payable out of the estate of such party, but the appointment shall not be made except when the court shall consider it necessary for the protection of the interest of such defendant; and a decree or judgment of any court shall not be void or erroneous because of the failure to have a guardian ad litem.

HISTORY: Codes, Hutchinson's 1848, ch. 54, art. 2(45); 1857, ch. 62, art. 52; 1871, § 1031; 1880, § 1894; 1892, § 553; 1906, § 604; Hemingway's 1917, § 364; 1930, § 398; 1942, § 1309.

Cross References — Infant, defined, see § 1-3-21.

Appointment of receivers of estates of minors and persons of unsound mind, see § 11-5-163.

Divorce proceedings for married minor, see § 93-5-9.

Appointment of guardian ad litem in divorce proceedings, see § 93-5-13.

Court appointment of guardian for minor, see § 93-13-13.

Proceedings to remove minority disability, see § 93-19-3.

Court appointment of an attorney to serve as guardian, and its costs, see Miss. Rule Civ. Proc., Rule 17.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Minors.
3. Incompetents.

1. In general.

A guardian ad litem should object to incompetent testimony, and if he fails to do so, the court of its own motion should reject it. Neblett v. Neblett, 70 Miss. 572, 12 So. 598, 1893 Miss. LEXIS 17 (Miss. 1893).

2. Minors.

Because the child's best interest was the court's "polestar" consideration in determining child custody, the importance of guardian ad litem appointments in child custody proceedings could not be overemphasized; in a case where a mother sought modification of child custody, and there was an allegation of abuse, it was mandatory that a guardian ad litem be appointed, under Miss. Code Ann. § 93-5-23 (Supp. 2002). Robison v. Lanford, 841 So. 2d 1119, 2003 Miss. LEXIS 151 (Miss. 2003).

In an action to construe a will wherein the question was whether the intended devisee was the testatrix' minor granddaughter, or testatrix' daughter, the decree of the chancery court was not void as against the minor because no guardian ad litem had been appointed, where the minor and her father, with whom she resided, were made parties to the petition, and were both served with process, and the natural father and mother of the minor were both very active and diligent in behalf of the minor on the trial of the case. Hutton v. Hutton, 233 Miss. 458, 102 So. 2d 424, 1958 Miss. LEXIS 404 (Miss. 1958).

Guardian's ad litem duty to represent infant throughout litigation; guardian ad litem not qualified to act as commissioner to foreclose vendor's lien. Belt v. Adams, 124 Miss. 194, 86 So. 584, 1920 Miss. LEXIS 485 (Miss. 1920).

Service of process in another state on minor defendants to a suit in this state, it not being made to appear that there is no father, mother, or guardian in this state upon whom process may be served, does not give jurisdiction as to such minors, or authorize the appointment of a guardian ad litem for them. Erwin v. Carson, 54 Miss. 282, 1876 Miss. LEXIS 31 (Miss. 1876); Frank v. Webb, 67 Miss. 462, 6 So. 620, 1889 Miss. LEXIS 9 (Miss. 1889).

3. Incompetents.

Where a grantee and optionee sued the grantor and trustee in a deed of trust, seeking a declaration as to the mental competency of the grantor and confirmation of title in the grantee, and the grantor had never disclaimed the grantee's title until this was done by the guardian ad litem, the grantee and the optionee rather than the grantor should be charged with compensation of the guardian ad litem. Austin v. Branch, 221 So. 2d 727, 1969 Miss. LEXIS 1507 (Miss. 1969).

Where a testatrix left all of her property to the use of her incompetent brother during his life, with the remainder to his guardian, and a guardian ad litem, who was appointed by the court to represent the incompetent during the probate proceedings, filed an answer on behalf of his ward, the incompetent was adequately represented at the probate. Darby v. Arrington, 194 Miss. 123, 11 So. 2d 220, 1942 Miss. LEXIS 170 (Miss. 1942).

Where the alleged incompetent owner of realty and his guardian were both made parties to a proceeding to foreclose a trust deed given by the guardian, and the owner appeared in the proceeding to contest confirmation of the sale on the ground of invalidity of the adjudication of insanity and appointment of a guardian because the owner was not served with process, questions as to the regularity and efficacy of the foreclosure proceedings were res judicata, in a subsequent proceeding to remove the cloud from the title (the sale having been confirmed), if the owner was sane, since he was not only properly summoned but appeared and resisted the entry of the final decree on the identical grounds urged in the proceeding to clear the title, and they were also res judicata, even if the owner was insane and the appointment of the guardian was invalid because no process had been served on the owner in the incompetency proceedings, since he was properly sued through the guardian, who was at least invested with the capacities of a guardian ad litem or next friend. Dana v. Zerkowsky, 192 Miss. 302, 5 So. 2d 423, 1942 Miss. LEXIS 4 (Miss. 1942).

RESEARCH REFERENCES

ALR.

Right of child to action against mother for infliction of prenatal injuries. 78 A.L.R.4th 1082.

Prosecution of mother for prenatal substance abuse based on endangerment of or delivery of controlled substance to child. 70 A.L.R.5th 461.

Am. Jur.

27A Am. Jur. 2d, Equity § 63.

CJS.

30A C.J.S., Equity § 53.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 9-5-91. Information to be provided to Administrative Office of Courts by chancery clerk in chancery cases in which guardian ad litem is appointed.

(1) In a chancery case in which a guardian ad litem is appointed by the court, it is the duty of the chancery clerk to prepare and forward to the Administrative Office of Courts the information described by subsection (2) of this section not later than the last day of the month following the entry of an order approving any payment to the guardian ad litem.

(2) The clerk shall prepare and forward the following information when filed in a contested case where the guardian ad litem fees exceed One Thousand Dollars ($1,000.00):

(a) A copy of any invoice for guardian ad litem fees;

(b) A copy of any order directing payment of guardian ad litem fees; and

(c) A copy of any petition seeking recovery of guardian ad litem fees, as well as any orders concerning payment of guardian ad litem fees, including, but not limited to, orders of contempt.

(3) If an order previously reported under subsection (1) of this section is amended by order of the court, the clerk shall forward the subsequent court order not later than the last day of the month following the entry of the amended order.

(4) The duty of a clerk to prepare and forward information under this section is not affected by:

(a) Any subsequent appeal of the court order;

(b) Any subsequent modification of the court order; or

(c) The expiration of the court order.

(5) This section does not apply to youth court matters.

HISTORY: Laws, 2017, ch. 418, § 2, effective upon passage (April 1, 2017).

Editor's Notes — A former § 9-5-91 [Codes, 1880, § 1952; 1892, §§ 457, 593; 1906, §

506; Hemingway's 1917, § 262; 1930, § 320; 1942, § 1228; Laws, 1886, p. 145; Laws, 1940, ch. 244; Laws, 1946, ch. 274; Laws, 1966, ch. 336, § 1; Laws, 1972, ch. 446, § 1; Repealed by Laws, 1991, ch. 573, § 141, effective from and after July 1, 1991] authorized a chancellor to exercise the same jurisdiction and perform the same duties in vacation as exercised and performed in term time.

§ 9-5-93. Trial of causes in vacation; power to enter decree prior to adjournment of next succeeding term.

Whenever the chancery court or chancellor has lawfully set any matter in vacation for confirmation or decree, and no contest has been timely filed, if an order or decree determining the same or setting another date therefor be not entered upon such date, the chancellor shall have the power to enter an order or decree on any day prior to the adjournment of the next succeeding term, without further process. Provided, that if the matter be one in which contest might have been entered prior to the date set and such contest be filed before the entry of such order or decree, the same shall be disposed of as if such contest had been timely filed.

HISTORY: Codes, 1942, § 1228.5; Laws, 1956, ch. 213, eff July 1, 1956.

Cross References — Rules concerning vacation matters, see Miss. Uniform Chancery Court Rules 7.00 et seq.

JUDICIAL DECISIONS

1. In general.

A will contest may not be tried in vacation where there was no precedent order therefor at term or written consent by the parties. Winters v. Carver, 248 Miss. 792, 161 So. 2d 202, 1964 Miss. LEXIS 305 (Miss. 1964).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts § 22.

CJS.

21 C.J.S., Courts § 156.

§ 9-5-95. Court or chancellor may extend time in vacation.

The court or chancellor in vacation shall have power in proper cases for good cause shown to grant a reasonable enlargement of the time for the filing of an answer or answers, or of a demurrer or demurrers, and shall have power in like cases and for like cause shown to set aside decrees pro confesso and thereupon to permit the filing of answer or answers. But no such enlargement of time should be granted where the request therefor is solely for delay or is the result of inexcusable neglect on the part of the defendant or his solicitor.

HISTORY: Codes, 1930, § 321; 1942, § 1229; Laws, 1924, ch. 151.

Cross References — Constitutional prohibition of delay in justice, see Miss Const. Art. 3, § 24.

Enlargement of time in which to comply with provisions of the Mississippi Rules of

Civil Procedure, see Miss. R. Civ. P. 6.

Overruled demurrers not delaying trials, see Miss. Uniform Chancery Court Rule 2.10.

Rules concerning vacation matters, see Miss. Uniform Chancery Court Rules 7.00 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Decree pro confesso.

1. In general.

Where a vendor brought an action to obtain purchasers' execution of a new note and a deed of trust for a lost one and to obtain a lien for balance of indebtedness then due on land conveyed, this action could have properly been tried by chancellor in term time and the chancellor was without authority to try the case and enter final decree for the vendor in vacation in view of the fact that since the deed of trust had not been recorded, there was no constructive notice to be restored, and restoration of constructive notice was the object of the statute. Hood v. Lamar, 219 Miss. 349, 68 So. 2d 456, 1953 Miss. LEXIS 395 (Miss. 1953).

2. Decree pro confesso.

A decree pro confesso will not be set aside where delay in filing an answer is inexcusable. Davis v. Polk Financial Service, 242 Miss. 419, 135 So. 2d 175, 1961 Miss. LEXIS 578 (Miss. 1961).

As a general rule the motion to set aside a pro confesso decree must set out a meritorius defense and be supported by affidavit. Bates v. McClellan, 212 Miss. 860, 56 So. 2d 52, 1952 Miss. LEXIS 319 (Miss. 1952).

A person who has recovered a pro confesso decree may waive the requirement of a formal motion, affidavit and answer on an application to set aside the decree. Bates v. McClellan, 212 Miss. 860, 56 So. 2d 52, 1952 Miss. LEXIS 319 (Miss. 1952).

Where an application to set aside a pro confesso decree is presented by a short motion spread on the motion docket and by a statement to the court ore tenus by the solicitor for the defendant and the matter proceeds to the final hearing without objection, no question can be successfully raised as to form. Bates v. McClellan, 212 Miss. 860, 56 So. 2d 52, 1952 Miss. LEXIS 319 (Miss. 1952).

On motion to set aside decree pro confesso, affidavit and motion must set out not only that defendant has meritorious defense, but also sufficient details thereof so as to enable judge to determine its meritoriousness vel non. Alexander v. Hyland, 208 Miss. 890, 45 So. 2d 739, 1950 Miss. LEXIS 312 (Miss. 1950).

Motion to set aside decree pro confesso in suit involving title to land to permit defendant to answer and to continue case until next term of court for trial on merits should be sustained when it is shown that defendant has meritorious defense, that failure to file answer was caused by misunderstandings as to time of trial and that valuable witness for defendant, a surveyor, was absent because he had been injured, and there is no showing that any harm will ensue to plaintiff if defendant is granted trial on merits. Alexander v. Hyland, 208 Miss. 890, 45 So. 2d 739, 1950 Miss. LEXIS 312 (Miss. 1950).

RESEARCH REFERENCES

Am. Jur.

27A Am. Jur. 2d, Equity §§ 107-173.

CJS.

30A C.J.S., Equity §§ 139-166.

§ 9-5-97. Additional powers of chancellor in vacation.

In the matter of ordering, decreeing and confirming sales of real and personal property of decedents, or of minors, or of persons of unsound mind, and in all other matters testamentary or of administration, in minors' business, matters affecting persons of unsound mind, and in the matter of the removal of disabilities of minority, the chancellors of the several districts of this state are hereby authorized and empowered to do in vacation all things, and to exercise all the powers in such matters that could be done by them in term time; and all laws governing the action of the chancery court in such matters, and the process and procedure therein, shall apply when the chancellor shall act therein in vacation; but before any sale of real estate shall be confirmed by the chancellor in vacation, the parties in interest shall have notice thereof as provided by law in the matter of confirming sales by chancellors in vacation.

HISTORY: Codes, 1906, § 507; Hemingway's 1917, § 263; 1930, § 322; 1942, § 1230; Laws, 1900, ch. 92.

Cross References — Powers of circuit judge in vacation, see § 11-7-131.

Authority of chancellor in vacation to order executor or administrator to continue business of decedent, see § 91-7-173.

Procedure in vacation for executor or administrator to borrow money to pay claims, see § 91-7-219.

Rules concerning vacation matters, see Miss. Uniform Chancery Court Rules 7.00 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Specific decrees.

1. In general.

Petition for sale of decedent's lands in W. county to pay debts may be heard by chancellor in S. county within same chancery district. Whitley v. Towle, 163 Miss. 418, 141 So. 571, 1932 Miss. LEXIS 57 (Miss. 1932).

Judicial sale cannot be confirmed in vacation when a bona fide protest is filed. Culley v. Rhodes, 124 Miss. 640, 87 So. 136, 1920 Miss. LEXIS 482 (Miss. 1920).

Chancery court or chancellor in vacation may exact an accounting from guardians or remove them. United States Fidelity & Guaranty Co. v. Jackson, 111 Miss. 752, 72 So. 150, 1916 Miss. LEXIS 384 (Miss. 1916).

Chancellor may approve executor's final account in vacation. United States Fidelity & Guaranty Co. v. State, 110 Miss. 16, 69 So. 1007, 1915 Miss. LEXIS 20 (Miss. 1915).

2. Specific decrees.

Chancellor had jurisdiction to render decree removing disabilities of minority in vacation, where only living parent appeared and answered petition. Wilkerson v. Swayze, 147 Miss. 141, 113 So. 327, 1927 Miss. LEXIS 347 (Miss. 1927).

Final decrees made in vacation cannot be vacated after adjournment. Ex parte Stanfield, 98 Miss. 214, 53 So. 538, 1910 Miss. LEXIS 54 (Miss. 1910).

Ex parte petition by attorney for decree requiring payment of his fee for services in estate matter cannot be granted in vacation. Murphy v. Harris, 93 Miss. 286, 48 So. 232, 1908 Miss. LEXIS 166 (Miss. 1908).

RESEARCH REFERENCES

Am. Jur.	**CJS.**
20 Am. Jur. 2d (Rev), Courts § 22.	21 C.J.S., Courts § 242.

§§ 9-5-99 and 9-5-101. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.
§ 9-5-99. [Codes, 1942, § 1231; Laws, 1932, ch. 143]
§ 9-5-101. [Codes, 1942, § 1231; Laws, 1932, ch. 143]

Editor's Notes — Former § 9-5-99 specified rules governing service of process in matters heard and decided in vacation.

Former § 9-5-101 provided for appearances and continuances invacation.

§ 9-5-103. Bonds of receivers, assignees, executors may be reduced or cancelled, if excessive or for sufficient cause.

Whenever it shall appear by petition to the chancery court, or chancellor in vacation, that any bond given by an assignee, receiver, executor, administrator, guardian, or trustee is in excess of the value of the estate being administered, and as such is an unnecessary expense to the estate, or that other sufficient cause appears for so doing, the chancery court or chancellor in vacation may, after five days' service of copy of said petition on the surety, cancel the bond or reduce the same to an amount sufficient to protect the estate, or accept a new bond in substitution of an existing one. However, the decree rendered shall not affect the liability upon a bond which accrued prior to its cancellation, reduction or substitution.

HISTORY: Codes, Hemingway's 1917, § 264; 1930, § 323; 1942, § 1233; Laws, 1914, ch. 155; Laws, 1940, ch. 234; Laws, 1958, ch. 232.

Cross References — Chancellor's authority to require additional security in vacation, see § 11-1-23.

Appointing or removing receivers in vacation, see § 11-5-151.

Discharge of surety from liability on bond, see § 91-7-317.

Applicability of Mississippi Rules of Civil Procedure to proceedings brought under this section, see Miss. R. Civ. P. 81.

Rules concerning vacation matters, see Miss. Uniform Chancery Court Rules 7.00 et seq.

RESEARCH REFERENCES

Am. Jur.	**CJS.**
63C Am. Jur. 2d, Public Officers and Employees §§ 127, 128 et seq.	21 C.J.S., Courts § 156.

§ 9-5-105. Expense of chancellor in hearing vacation matter paid equally by parties.

When any chancellor in this state shall, by agreement of the parties, hear any cause or matter in vacation, at any place, other than the place of his residence, all expenses incurred by him in attendance upon said hearing, shall be paid equally by the parties thereto, upon the chancellor's filing an itemized statement thereof, with the clerk of the chancery court of the county in which such matter shall be pending; and when at any such hearing the attendance of the court reporter shall be required his actual expenses shall be likewise paid.

HISTORY: Codes, 1930, § 324; 1942, § 1234; Laws, 1924, ch. 153.

Cross References — Payment of chancellor's expenses for drainage district hearings, see § 51-29-109.

RESEARCH REFERENCES

Am. Jur.
46 Am. Jur. 2d (Rev), Judges §§ 48- 54.

CJS.
48A C.J.S., Judges §§ 232 et seq.

CHANCERY CLERKS

Sec.
9-5-131. Bond of clerk.
9-5-132. Training and continuing education course requirements for chancery clerks; filing of certificate of compliance; penalty for failure to file; courses; expenses; continuing education credit for attendance at chancery court proceedings.
9-5-133. How clerk of chancery court may appoint deputies.
9-5-135. Clerk to attend court and keep minutes.
9-5-137. Other duties of the clerk.
9-5-139. Chancery clerk's office at Biloxi.
9-5-141. Acts clerk may perform at any time.
9-5-143. Repealed.
9-5-145. How proceedings before clerk to be conducted.
9-5-147. All acts of clerk subject to approval or disapproval.
9-5-149. Repealed.
9-5-151. How minutes of proceedings before clerk preserved and approved.
9-5-153. How approval of clerk's minutes and orders shown.
9-5-155. Bonds examined by chancellor.
9-5-157. Register of sureties on bonds to be kept.
9-5-159. Abstract of certain decrees furnished circuit clerk.
9-5-161. Clerk to make final record of causes.
9-5-163. Custodian of certain records and papers.
9-5-165. Removal and return of court files and documents in clerk's office.
9-5-167. Newspaper subscribed for and preserved.
9-5-169. All records and papers subject to inspection.
9-5-171. Destruction of records.
9-5-173. Register of claims against estates.

§ 9-5-131. Bond of clerk.

The clerk of the chancery court, before he enters upon the duties of the office, shall take the oath of office and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for such clerk; however, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). Such clerk may be required by the court, or the chancellor in vacation, to give additional bond in any particular case, which shall be a cumulative security, and shall not in any manner affect the liability on his official bond for any matter covered by it. His official bond shall be held to cover all his official acts, and all moneys which may come into his hands according to law or by order of the court or chancellor.

HISTORY: Codes, Hutchinson's 1848, ch. 27, art. 4 (1); 1857, ch. 62, art. 12; 1871, § 990; 1880, § 1807; 1892, § 460; 1906, § 509; Hemingway's 1917, § 266; 1930, § 325; 1942, § 1235; Laws, 1984, ch. 474; Laws, 1986, ch. 458, § 10; Laws, 1991, ch. 604, § 1, eff from and after July 1, 1991.

Editor's Notes — Section 48, Chapter 458, Laws, 1986, provided that § 9-5-131 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws, 1986, by deleting the date for repeal.

Cross References — Constitutional authority for office of clerk of the chancery court, see Miss. Const. Art. 6, § 168.

Provisions common to court clerks, see §§ 9-1-27 et seq.

Provision that chancery clerks shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Officer before whom oath shall be taken, see § 25-1-9.

Place of filing oath, see § 25-1-11.

Office hours and site of office of chancery court clerk, see § 25-1-99.

Same person holding offices of circuit and chancery court clerk, see § 25-1-103.

Fees of chancery court clerks, see §§ 25-7-9, 25-7-13.

Duties of chancery clerk with respect to county depositories, see § 27-105-315.

Rules concerning chancery clerks, see Miss. Uniform Chancery Court Rules 9.00 et seq.

JUDICIAL DECISIONS

1. In general.

The sureties on the official bond are liable to the heirs for the proceeds of land of a decedent sold by the clerk as commissioner, although a special statutory bond to account therefor had been given before the sale. Johnson v. Bobbitt, 81 Miss. 339, 33 So. 73, 1902 Miss. LEXIS 152 (Miss. 1902).

OPINIONS OF THE ATTORNEY GENERAL

As the position of county administrator and its attendant responsibilities not within the statutory responsibilities of the chancery clerk, such position represents an additional position of responsibility the clerk may, in the mutual discretion of the board of supervisors and the clerk, assume in consideration for additional compensation, and, as such, both the bond required by a chancery clerk and the bond required by a county administrator must be given. Amos, July 2, 1992, A.G. Op. #92-0455.

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

RESEARCH REFERENCES

Am. Jur.

63C Am. Jur. 2d, Public Officers and Employees §§ 127, 128 et seq.

CJS.

21 C.J.S., Courts §§ 327, 328.

§ 9-5-132. Training and continuing education course requirements for chancery clerks; filing of certificate of compliance; penalty for failure to file; courses; expenses; continuing education credit for attendance at chancery court proceedings.

(1) Except as otherwise provided herein, no chancery clerk elected for a full term of office commencing on or after January 1, 1996, shall exercise any functions of office or be eligible to take the oath of office unless and until the chancery clerk has filed in the office of the circuit clerk a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center within six (6) months of the beginning of the term for which such chancery clerk is elected. A chancery clerk who has completed the course of training and education and has satisfied his annual continuing education course requirements, and who is then elected for a succeeding term of office subsequent to the initial term for which he completed the training course, shall not be required to repeat the training and education course upon reelection. Any chancery clerk who has

served a full or partial term before January 1, 1996, shall be exempt from the requirements of this subsection.

(2) In addition to meeting the requirements of subsection (1) of this section, after taking office by election or otherwise, each chancery clerk shall be required to file annually in the office of the circuit clerk a certificate of completion of a course of continuing education conducted by the Mississippi Judicial College. No chancery clerk shall have to comply with this subsection unless he will have been in office for five (5) months or more during a calendar year.

(3) Each chancery clerk elected for a term commencing on or after January 1, 1992, shall be required to file annually the certificate required in subsection (2) of this section commencing January 1, 1994.

(4) The requirements for obtaining the certificates in this section shall be as provided in subsection (6) of this section.

(5) Upon the failure of any chancery clerk to file with the circuit clerk the certificates of completion as provided in this section, such chancery clerk shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to any fee, compensation or salary, from any source, for services rendered as chancery clerk, for the period of time during which such certificate remains unfiled.

(6) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct courses of training for basic and continuing education for chancery clerks of this state. The basic course of training shall be known as the "Chancery Clerks Training Course" and shall consist of at least thirty-two (32) hours of training. The continuing education course shall be known as the "Continuing Education Course for Chancery Clerks," and shall consist of at least eighteen (18) hours of training. The content of the basic and continuing education courses and when and where such courses are to be conducted shall be determined by the judicial college. The judicial college shall issue certificates of completion to those chancery clerks who complete such courses.

(7) The expenses of the training, including training of those elected as chancery clerk who have not yet begun their term of office, shall be borne as an expense of the office of the chancery clerk.

(8) Chancery clerks shall be allowed credit toward their continuing education course requirements for attendance at chancery court proceedings if the presiding chancery court judge certifies that the chancery clerk was in actual attendance at a term or terms of court; provided, however, that at least twelve (12) hours per year of the continuing education course requirements must be completed at a regularly established program or programs conducted by the Mississippi Judicial College.

HISTORY: Laws, 1993, ch. 595, § 2; Laws, 1995, ch. 337, § 1, eff from and after passage (approved March 10, 1995).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court §§ 2-4.

CJS.
21 C.J.S., Courts § 253 et seq.

§ 9-5-133. How clerk of chancery court may appoint deputies.

The clerk of the chancery court shall have power, with the approbation of the court, or of the judge in vacation, to appoint one or more deputies, who shall take the oath of office, and who thereupon shall have power to do and perform all the acts and duties which their principal may lawfully do; such approval, when given by the judge in vacation, shall be in writing, and shall be entered on the minutes of the court at the next term.

HISTORY: Codes, Hutchinson's 1848, ch. 27, class 2, art. 1 (12); class 3 art. 1 (10); 1857, ch. 61, art. 17, ch. 62, art. 13; 1871, §§ 551, 990; 1880, § 2281; 1892, § 930; 1906, § 1006; Hemingway's 1917, § 726; 1930, § 747; 1942, § 1662.

Cross References — Provisions common to court clerks, see §§ 9-1-27 et seq.

JUDICIAL DECISIONS

1. In general.

Acting as guardian of the person or estate of an habitual drunkard is not one of the ex officio duties of a clerk of the chancery court, but devolves upon him when, but not unless, he is appointed as such by a decree of that court, and therefore is not within the ex officio powers vested in a deputy chancery clerk by the statute. O'Bannon v. Henrich, 191 Miss. 815, 4 So. 2d 208, 1941 Miss. LEXIS 176 (Miss. 1941).

Deputy circuit clerk may appoint justice of peace to preside over eminent domain court. Western Union Tel. Co. v. Louisville & N. R. Co., 107 Miss. 626, 65 So. 650, 1914 Miss. LEXIS 129 (Miss. 1914), aff'd, 250 U.S. 363, 39 S. Ct. 513, 63 L. Ed. 1032, 1919 U.S. LEXIS 1756 (U.S. 1919).

OPINIONS OF THE ATTORNEY GENERAL

Chancery Judge is not authorized to order employees to be provided to Office of Chancery Clerk. O'Neal Sept. 1, 1993, A.G. Op. #93-0605.

A board of supervisors is vested with the power to purchase real estate on which to construct public health buildings and clinics sponsored by the public health units of any county, or a public health building to house the county health department, out of the general fund and, provided that ultimate control and management of the facilities remains in the hands of local government, the operation of the building may be done pursuant to contract. Gex, January 9, 1998, A.G. Op. #97-0801.

There is no statutory authority for a chancery clerk to hire a public information officer. Crook, June 14, 2002, A.G. Op. #02-0304.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 43.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-135. Clerk to attend court and keep minutes.

(1) The clerk shall, in person or by deputy, attend all the sessions of the court, and shall keep minute books, in which he shall record, under the directions of the chancellor, all the proceedings of the court; and the minutes of the preceding day shall be read by him each morning of the session in open court, and the last day's proceedings shall be read by him in open court before adjournment, and the minutes must be signed by the chancellor.

(2) The clerk, at his option, may elect to keep the minute books by means of electronic filing or storage or both, as provided in Sections 9-1-51 through 9-1-57 in lieu of or in addition to any paper records.

HISTORY: Codes, 1857, ch. 62, art. 15; 1871, § 991; 1880, § 1808; 1892, § 461; 1906, § 510; Hemingway's 1917, § 267; 1930, § 326; 1942, § 1236; Laws, 1994, ch. 521, § 4, eff from and after passage (approved March 25, 1994).

Cross References — Provisions common to clerks, see §§ 9-1-27 et seq.
Minutes of all courts of record, see § 9-1-33.
Clerk's custody of exhibits, see § 9-13-27.
Duty of clerk to keep minutes for board of supervisors, see § 19-3-27.
Crime of alteration of records, see § 97-11-1.
Clerk's duty to keep minute book, see Miss. R. Civ. P. 79.

JUDICIAL DECISIONS

1. In general.

Under Article 6, § 170 of the Mississippi Constitution and § 19-17-1, the duties of the clerk of the board of supervisors and the county auditor are just as much a part of the duties of the chancery clerk as attending and keeping the minutes of all chancery court proceedings as is required by §§ 9-5-135 and 9-5-137. Barlow v. Weathersby, 597 So. 2d 1288, 1992 Miss. LEXIS 196 (Miss. 1992).

OPINIONS OF THE ATTORNEY GENERAL

Chancery Judge is not authorized to order employees to be provided to Office of Chancery Clerk. O'Neal Sept. 1, 1993, A.G. Op. #93-0605.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Clerks of Court §§ 1, 29.

CJS.

21 C.J.S., Courts §§ 327-351.

§ 9-5-137. Other duties of the clerk.

It shall be the duty of the clerk to preserve and keep all records, files, papers and proceedings belonging to his office, and to record all last wills and testaments which may be probated; all letters testamentary, of administration, and guardianship; all accounts allowed; all inventories, appraisements, and reports duly returned; all instruments which are duly proved, and which by law are required to be recorded in his office, in well-bound books to be kept for that purpose, each class in a separate book or books, or by means of electronic filing or storage or both in addition to or in lieu of any such physical records as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect; all records shall be properly indexed. He shall issue all process which may be required of him by law or by order of the court, or the chancellor in vacation; and shall discharge all other duties which may be required of him by law, or which properly appertain to the duties of his office. The clerk shall be under the direction of the court in termtime, and of the chancellor in vacation.

HISTORY: Codes, 1871, § 996; 1880, § 1822; 1892, § 477; 1906, § 526; Hemingway's 1917, § 283; 1930, § 327; 1942, § 1237; Laws, 1994, ch. 521, § 5, eff from and after passage (approved March 25, 1994).

Cross References — Provisions common to clerks, see §§ 9-1-27 et seq.

Lis pendens record, see §§ 11-47-1 et seq.

Duty of chancery clerks following creation of municipal corporation, see § 21-1-23.

Duty of clerk following enlargement or contraction of corporate limits of municipality, see §§ 21-1-39, 21-1-41.

Duty of court and clerks following abolition of municipal corporation, see §§ 21-1-53, 21-1-55, 21-1-57.

Records of motor vehicle ad valorem tax collections, see § 27-51-25.

Duty of clerk with respect to land classification report, see § 29-3-37.

Duty of clerk with respect to records of veterans, see § 35-3-11.

Duty of clerk with regard to commitment proceedings of persons in need of mental treatment, see §§ 41-21-61 et seq.

Filing to perfect security interest, see § 75-2-401.

Recording declaration of trust under investment trust law, see § 79-15-19.

Filing certificate of dissolution of credit union, see § 81-13-59.

Recording construction liens, see § 85-7-133.

Filing instrument concerning the sale of lands, see § 89-3-1.

Duty of clerk in recording instruments concerning land, see § 89-5-25.

Duty of clerk in filing vouchers for annual accounts by executors and administrators, see § 91-7-279.

Appointment of clerk as guardian of minor, see § 93-13-21.

JUDICIAL DECISIONS

1. In general.

Former husband was unable to show a violation of U.S. Const. Art. IV, § 1 or Miss. Code Ann. § 9-5-137 in a divorce action because the evidence demonstrated that he was served personally, and no hearing was commenced without adequate and timely process. Richardson v. Richardson, 856 So. 2d 426, 2003 Miss. App. LEXIS 259 (Miss. Ct. App. 2003), cert. denied, 2003 Miss. LEXIS 638 (Miss. Nov. 6, 2003).

Under Article 6, § 170 of the Mississippi Constitution and § 19-17-1, the duties of the clerk of the board of supervisors and the county auditor are just as much a part of the duties of the chancery clerk as attending and keeping the minutes of all chancery court proceedings as is required by §§ 9-5-135 and 9-5-137. Barlow v. Weathersby, 597 So. 2d 1288, 1992 Miss. LEXIS 196 (Miss. 1992).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court §§ 20-31.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-139. Chancery clerk's office at Biloxi.

In Harrison County, a county with two judicial districts, it shall be the duty of the chancery clerk to keep in his office at Biloxi, suitable record books or electronic equipment for the purpose of recording deeds, deeds of trust and other conveyances, instruments and contracts required by law to be recorded, and all deeds, deeds of trust, mortgages, contracts, wills and other conveyances and contracts, and all muniments of title, documents and other papers required by law to be filed, enrolled or recorded relating to property situated in said second judicial district, shall be properly filed, enrolled or recorded in the office of said clerk at Biloxi, in books or by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as he may elect, and to be kept for that purpose in his said office at Biloxi. All official bonds shall be recorded by said clerk as required by law in the offices of the said clerk at Gulfport and at Biloxi.

HISTORY: Codes, 1942, § 2910-06; Laws, 1962, ch. 257, § 6; Laws, 1994, ch. 521, § 6, eff from and after passage (approved March 25, 1994).

Cross References — Duties of clerk of chancery court, see §§ 9-5-135, 9-5-137.

§ 9-5-141. Acts clerk may perform at any time.

The clerk or his deputy may at any time receive and file all bills, petitions, motions, accounts, inventories, reports, or other papers offered for that purpose, and may issue all process authorized by law and proper in any matter or proceeding. He may also at any time, in termtime or vacation, perform the following functions; issue warrants of appraisement to appraise the personal estate of decedents; allow and register claims against estates being administered in the court of which he is clerk; make all orders and issue all process necessary for the collection and preservation of estates of decedents, minors, and persons of unsound mind; appoint some person to collect and preserve the estate of any decedent in the state in any case provided for; grant letters of administration to the husband or wife, or other person entitled thereto; take the proof of wills, admit wills to probate, in common form, grant letters testamentary, letters of administration with the will annexed, and de bonis non; appoint guardians for minors, persons of unsound mind, and convicts of felony; grant letters of administration; institute suits in cases provided for, and, whenever an appeal shall be taken from the grant of letters testamentary, of administration, or guardianship, appoint some fit person to discharge the duties pending the appeal. He may do all such other acts as are provided by law and by the Mississippi Rules of Civil Procedure.

HISTORY: Codes, 1871, § 995; 1880, § 1814; 1892, § 468; 1906, § 517; Hemingway's 1917, § 274; 1930, § 337; 1942, § 1248; Laws, 1914, ch. 212; Laws, 1974, ch. 449, § 1; Laws, 1991, ch. 573, § 7, eff from and after July 1, 1991.

Cross References — Power of court to determine all matters in estates administered, see § 9-5-83.

Appointment of temporary administrator, see § 91-7-53.

Grant of administration in decedents' estates, see § 91-7-63.

Grant of administration de bonis non, see § 91-7-69.

Grant of letters to county administrator, see § 91-7-79.

Appointment of sheriff as administrator, see § 91-7-83.

Method for probating claims, see § 91-7-149.

Proceedings in insolvent estates, see § 91-7-261.

Appointment of guardian, see §§ 93-13-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Validity of wills.

1. In general.

Where instrument purporting to be a will was admitted to probate by the clerk in vacation, without notice to the objectors, and will contest was filed thereafter but before approval and confirmation of clerk's acts in question, and admission to probate was thereafter approved and confirmed over objection of contestants, and on subsequent trial of will contest probate of the instrument was offered in evidence but contestant offered no evidence, peremptory instruction in favor of proponent was correct. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

2. Validity of wills.

Attempt to contest will was unseasonable where, while chancery court was in vacation, chancery clerk on January 24, 1983, admitted will and codicils to probate, thereafter issuing Letters Testamentary; on June 13, 1983, chancellor entered order ratifying actions by chancery clerk conducted while court was in vacation; and, action to set aside will alleging mental incompetency when making will was commenced on May 6, 1985. Sims v. Stennis, 510 So. 2d 798 (Miss. 1987).

Probate of will in common form before chancery clerk in vacation is prima facie evidence of validity of will until will is declared invalid and set aside by proper and lawful proceeding in proper court, having jurisdiction of subject matter and of parties in interest. Rice v. McMullen, 207 Miss. 706, 43 So. 2d 195, 1949 Miss. LEXIS 382 (Miss. 1949).

In proceeding by residuary legatee to recover his share of estate, introduction in evidence of proceedings before chancery clerk in vacation admitting will to probate in common form makes out prima facie case of validity of will. Rice v. McMullen, 207 Miss. 706, 43 So. 2d 195, 1949 Miss. LEXIS 382 (Miss. 1949).

Probate of a will in common form before the clerk in vacation should be deemed prima facie evidence of the validity of the will unless and until its invalidity shall have been determined by the court. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Where contest of a will was filed after admission of the will to probate by the clerk in vacation without notice to the objectors but before such admission was approved and confirmed by the court, such contest was not filed "before probate" within the meaning of Code 1942 § 504, so as to preclude introduction in evidence of the probate of the will as prima facie evidence of its validity, in the trial of the will contest. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Entry by the clerk of his order in vacation admitting a will to probate is an adjudication by him that the instrument has been duly proven by the presentation thereof with the affidavits of the subscribing witnesses thereto attached. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

RESEARCH REFERENCES

ALR.

Probate where two or more testamentary documents, bearing the same date or undated, are proffered. 17 A.L.R.3d 603.

What circumstances excuse failure to submit will for probate within time limit set by statute. 17 A.L.R.3d 1361.

Am. Jur.

15A Am. Jur. 2d, Clerks of Court §§ 20-23.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 191 et seq.

CJS.

21 C.J.S., Courts §§ 327-351.

§ 9-5-143. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-5-143. [Codes, 1857, ch. 62, art. 38; 1871, § 1020; 1880, § 1815; 1892, § 469; 1906, § 518; Hemingway's 1917, § 275; 1930, § 338; 1942, § 1249]

Editor's Notes — Former § 9-5-143 directed that rules be held in the clerk's office, specified the purposes for such rules, and when they should be held.

§ 9-5-145. How proceedings before clerk to be conducted.

In all applications and proceedings before the clerk in vacation or in term time, the same pleadings and evidence and forms shall be observed, and the same process and service and return shall be necessary, as though the proceedings were before the court.

HISTORY: Codes, 1871, § 995; 1880, § 1821; 1892, § 476; 1906, § 525; Hemingway's 1917, § 282; 1930, § 339; 1942, § 1250; Laws, 1974, ch. 449, § 2, eff from and after passage (approved March 26, 1974).

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Clerks of Courts §§ 24, 25.

CJS.

14 C.J.S., Clerks of Courts §§ 236-265.

§ 9-5-147. All acts of clerk subject to approval or disapproval.

All acts, judgments, orders, or decrees made by the clerk in term time or vacation or at rules, shall be subject to the approval or disapproval of the court of which he is clerk, and shall not be final until approved by the court. All such orders and proceedings of the clerk may, by order of the chancellor in vacation, be suspended until a hearing before him in court, and shall be subject to such orders and decrees as the court may make.

HISTORY: Codes, 1857, ch. 62, art. 38; 1871, §§ 995, 1020; 1880, §§ 1815, 1819; 1892, §§ 470, 474; 1906, §§ 519, 523; Hemingway's 1917, §§ 276, 280; 1930, § 340; 1942, § 1251; Laws, 1974, ch. 449, § 3, eff from and after passage (approved March 26, 1974).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Probate of wills.

1. In general.

Whether dismissal of bill on plaintiff's request during the last 1917 vacation was erroneous was properly presented by exceptions at the January term 1918. Northern v. Scruggs, 118 Miss. 353, 79 So. 227, 1918 Miss. LEXIS 87 (Miss. 1918).

2. Probate of wills.

Where contest of a will was filed after admission of the will to probate by the clerk in vacation without notice to the objectors but before such admission was approved and confirmed by the court, such contest was not filed "before probate" within the meaning of Code 1942, § 504, so as to preclude introduction in evidence of the probate of the will as prima facie evidence of its validity, in the trial of the will contest. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Entry by the clerk of his order in vacation admitting a will to probate is an adjudication by him that the instrument has been duly proven by the presentation thereof with the affidavits of the subscribing witnesses thereto attached. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Probate of a will in common form before the clerk in vacation should be deemed prima facie evidence of the validity of the will unless and until its invalidity shall have been determined by the court. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Where instrument purporting to be a will was admitted to probate by the clerk in vacation, without notice to the objectors, and will contest was filed thereafter but before approval and confirmation of clerk's acts in question, and admission to probate was thereafter approved and confirmed over objection of contestants, and on subsequent trial of will contest probate of the instrument was offered in evidence but contestant offered no evidence, peremptory instruction in favor of proponent was correct. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

As respects liability of chancery clerk for failure to attach to claim against estate certificate that claim was probated, allowed, and registered, probating, allowing, and registering of claims against estate are not "judicial acts." Poyner v. Gilmore, 171 Miss. 859, 158 So. 922, 1935 Miss. LEXIS 25 (Miss. 1935).

Whenever claim against estate of decedent, to which affidavit in compliance with statute is attached, is presented to clerk for probate, clerk has mandatory duty to admit claim to probate by attaching his certificate thereto. Poyner v. Gilmore, 171 Miss. 859, 158 So. 922, 1935 Miss. LEXIS 25 (Miss. 1935).

Bill against chancery clerk and his surety for failure to attach to claim against estate clerk's certificate setting forth that claim was probated, allowed, and registered, because of which failure claim was disallowed, held not demurrable because not alleging that administrator possessed assets with which to pay claim if it had been properly probated, since claimant would at least be entitled to nominal damages. Poyner v. Gilmore, 171 Miss. 859, 158 So. 922, 1935 Miss. LEXIS 25 (Miss. 1935).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court §§ 20-28.

CJS.
14 C.J.S., Clerks of Courts §§ 236-265.

§ 9-5-149. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-5-149. [Codes, 1880, § 1816; 1892, § 471; 1906, § 520; Hemingway's 1917, § 277; 1930, § 341; 1942, § 1252; Laws, 1974, ch. 449, § 4]

Editor's Notes — Former § 9-5-149 directed that the clerk keep minutes of proceedings before the clerk and specified the manner of taking and recording the minutes.

§ 9-5-151. How minutes of proceedings before clerk preserved and approved.

The minutes so kept of proceedings in vacation or in term time shall constitute a record of the office and shall be carefully preserved as such, free from erasure or alteration; and, at the first term thereafter of the court, in the case of minutes in vacation, or in the case of minutes in term time before the clerk at that term or the first term thereafter, shall be examined by the court and if approved, shall thereby become the minutes of the court, as if entered at a term thereof; and all the orders and decrees entered in said minutes in vacation, shall, by such approval of the court, become final and be as valid and effectual as if done by the court when they were done by the clerk.

HISTORY: Codes, 1880, § 1817; 1892, § 472; 1906, § 521; Hemingway's 1917, § 278; 1930, § 342; 1942 § 1253; Laws, 1974, ch. 449, § 5, eff from and after passage (approved March 26, 1974).

JUDICIAL DECISIONS

1. In general.

Attempt to contest will was unseasonable where, while chancery court was in vacation, chancery clerk on January 24, 1983, admitted will and codicils to probate, thereafter issuing Letters Testamentary; on June 13, 1983, chancellor entered order ratifying actions by chancery clerk conducted while court was in vacation; and action to set aside will alleging mental incompetency when making will was commenced on May 6, 1985. Sims v. Stennis, 510 So. 2d 798 (Miss. 1987).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-153. How approval of clerk's minutes and orders shown.

The approval by the court of minutes entered in vacation or in term time, and adoption of the orders and decrees made by the clerk, may be evidenced by an order of the court approving such orders and decrees, excepting such as may be specified as not approved. It shall not be necessary to enter on the minutes of the court, in term time, any of said orders or decrees made in vacation or in term time, but the same, as entered in vacation or in term time, shall, by the approval of the court, become the acts of the court.

HISTORY: Codes, 1880, § 1818; 1892, § 473; 1906, § 522; Hemingway's 1917, § 279; 1930, § 343; 1942, § 1254; Laws, 1974, ch. 449, § 6, eff from and after passage (approved March 26, 1974).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court §§ 20-29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-155. Bonds examined by chancellor.

The chancellor shall, at each term of the court, carefully examine all bonds taken by the clerk in vacation, in pursuance of any order of the court, or the requirement of law, in any proceeding in such court, and make such orders in reference thereto as he shall deem necessary for the security of the parties interested therein.

HISTORY: Codes, 1871, § 995; 1880, § 1820; 1892, § 475; 1906, § 524; Hemingway's 1917, § 281; 1930, § 344; 1942, § 1255.

Cross References — Rules concerning vacation matters, see Miss. Uniform Chancery Court Rules 7.00 et seq.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Bonds §§ 4-22.

CJS.
11 C.J.S., Bonds §§ 7-30.

§ 9-5-157. Register of sureties on bonds to be kept.

The clerk of the chancery court shall either procure a well-bound book, arranged alphabetically and properly ruled, lined and headed to show the name of the principal and surety, name of principal obligor, name of obligee, date of bond, penalty of bond, kind of bond, where recorded if recorded, number of suit in which filed and date of discharge or provide for the electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57 of this information. In one of these manners he shall abstract each bond, when filed in his office, by entering in such record the name of each principal and surety, under the proper letter, the name of principal obligor, name of obligee, date, penalty, kind of bond, where recorded if recorded, and number of suit in which filed. And when such bond has been discharged, the date thereof shall be entered in said record under the proper heading. The clerk of the chancery court shall also, as soon as said record has been obtained, thus abstract all executor's, administrator's and guardian's bonds in matters at that time pending in the chancery court of his county.

HISTORY: Codes, 1906, § 527; Hemingway's 1917, § 284; 1930, § 345; 1942, § 1256; Laws, 1994, ch. 521, § 7, eff from and after passage (approved March 25, 1994).

Cross References — Register of sureties on bonds to be kept by circuit clerks, see § 9-7-137.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Bonds §§ 1 et seq.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-159. Abstract of certain decrees furnished circuit clerk.

The clerk of the chancery court shall, within ten days after the expiration of the term at which any decree for money shall be made, which is enforceable by execution against the defendant, furnish an abstract of such decree to the clerk of the circuit court of the county in which such decree is made; and it shall be the duty of the circuit clerk forthwith to enroll the same on the "Judgment Roll" in his office as judgments of the circuit court are required to be enrolled.

HISTORY: Codes, 1880, § 1823; 1892, § 478; 1906, § 528; Hemingway's 1917, § 285; 1930, § 346; 1942, § 1257.

Cross References — Final judgment rendered in Supreme Court, see § 11-3-41.
Form of judgment roll, see § 11-7-189.
Effect of enrollment of judgment, see § 11-7-197.
Decree rendered in estate of intestate, see § 91-1-31.

RESEARCH REFERENCES

Am. Jur.
27A Am. Jur. 2d, Equity §§ 155 et seq.

§ 9-5-161. Clerk to make final record of causes.

(1) The clerk shall, within three (3) months after the final termination of each suit involving real estate, record all the pleadings, proofs, exhibits and proceedings therein, or such part thereof as may be required by order of the chancellor, in a book to be kept for that purpose, and to be styled "The Book of Final Records in Chancery." He shall likewise make a final record of all other proceedings or suits, if required by the decree or by order of the chancellor, omitting such portions from the record books as the chancellor may direct. The clerk shall also make final record of all or such portions of a former terminated proceeding or suit as may be requested by any person, upon payment by such person of the cost thereof.

(2) It shall be the duty of the chancery clerk of any county in which there is a county court established, to record in the final record the proceedings of all or any part thereof of proceedings in said court, affecting the title of lands in said county, when requested so to do by any person interested in said lands, and upon the payment of the fee therefor by the person requesting same, and the clerk shall index same in the deed records of the county, and the filing of said proceedings or parts thereof shall be constructive notice from the date of said filing to all persons of said proceedings the same as if they had been decided by the chancery court.

(3) The records required by subsections (1) and (2) of this section may be kept by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect.

HISTORY: Codes, 1857, ch. 62, art. 15; 1871 § 991; 1880, § 1808; 1892, § 462; 1906, § 511; Hemingway's 1917, § 268; 1930, § 347; 1942, § 1258; Laws, 1946, ch. 469, §§ 1, 2; Laws, 1994, ch. 521, § 8, eff from and after passage (approved March 25, 1994).

Cross References — Final record in suit affecting real estate in circuit court, see § 9-7-127.

Filing of papers relating to any cause, see § 11-1-5.

Final judgment rendered in Supreme Court, see § 11-3-41.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-163. Custodian of certain records and papers.

The clerk of the chancery court shall be the custodian of all documents, records, books and papers belonging, or in any way appertaining, to the probate court, and of the board of police, formerly existing, except as to such as may be required by law to be kept by the clerk of the circuit court; and, as such custodian, he shall do and perform all acts in relation to such records, books and papers which were heretofore required of, or might lawfully have been done by, the clerk of the said probate court or board of police. All such documents, records, books and papers may be kept by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect.

HISTORY: Codes, 1871, § 997; 1880, § 1824; 1892, § 479; 1906, § 529; Hemingway's 1917, § 286; 1930, § 348; 1942, § 1259; Laws, 1994, ch. 521, § 9, eff from and after passage (approved March 25, 1994).

Cross References — Authority to purchase photorecording equipment for chancery clerks, see § 19-15-5.

Larceny of court records, see § 97-9-3.

Rule requiring that all papers be kept in proper files, see Miss. Uniform Chancery Court Rule 9.02.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-165. Removal and return of court files and documents in clerk's office.

The clerk shall not suffer any paper filed to be withdrawn but by leave of the chancellor, and then only by retaining a copy to be made at the cost of the party obtaining the leave. Provided, however, that any duly licensed and practicing attorney in good standing in the court may remove court files and related legal papers other than youth court and adoption court files and related papers from the clerk's office by signing therefor himself, or by a designated representative of his law office, on a record to be provided for that purpose. Such files or documents so removed shall be attested to by the clerk or his deputy at the time of removal, and said attorney shall be personally responsible for their safekeeping and return within ten (10) days, or before the first day of the next term of chancery court, whichever comes first and such files or documents shall not be removed from the county where the same are filed except that said files or documents may be taken by said attorney for use in a vacation hearing to such county where the hearing may be held. Failure to return any such court files or related legal papers as provided herein shall constitute contempt of court.

HISTORY: Codes, 1857, ch. 62, art. 16; 1871, § 992; 1880, § 1809; 1892, § 463; 1906, § 512; Hemingway's 1917, § 269; 1930, § 328; 1942, § 1238; Laws, 1964, ch. 308, eff from and after passage (approved March 23, 1964).

Cross References — Duties of board of supervisors as to indexing and filing of chancery causes finally disposed of, see § 19-15-7.

Removal of case files from the clerk's office, see Miss. R. Civ. P. 79.

JUDICIAL DECISIONS

1. In general.

The approval of sufficiency of an appeal bond is not the equivalent of the filing of the bond, when the provisions of this section [Code 1942 § 1238] have not been complied with. Wood v. Warren, 193 So. 2d 123, 1966 Miss. LEXIS 1274 (Miss. 1966).

Suit in chancery begun when bill filed with clerk. Williams v. New York Life Ins. Co., 132 Miss. 345, 96 So. 97, 1923 Miss. LEXIS 32 (Miss. 1923).

A paper is not filed in the legal sense, notwithstanding it may be marked "filed," until it has been delivered to the proper official with the purpose that the usual steps be taken in reference thereto. Where a bill is handed to the clerk and marked "filed" by him, but immediately carried away by the solicitor who stated that he did not wish process issued, there has been no such filing as will give priority of lien over another creditor who, before the return of the bill and issuance of process, has filed a like bill and had process issued thereon. Meridian Nat'l Bank v. Hoyt & Bros. Co., 74 Miss. 221, 21 So. 12, 1896 Miss. LEXIS 142 (Miss. 1896).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

§ 9-5-167. Newspaper subscribed for and preserved.

The clerk of the chancery court shall subscribe to at least one (1) and not more than two (2) of the newspapers published in his county as the court or chancellor may direct; and in the event no newspaper is published in the county, the clerk shall subscribe to the newspaper in which the publications ordered by the court are usually made. To preserve such newspapers, the clerk shall carefully file the original or microfilm copies thereof in his office, or may keep the same by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect. Before the clerk may utilize microfilm copies of newspapers presently on file and of those newspapers to be received in the future, the written approval of the court and the board of supervisors must be obtained. The expense of the subscriptions and the expense of the binding of filed newspapers or of the microfilming process shall be paid out of the county treasury. Two (2) or more counties may join together and agree to accomplish the purposes of this section and to share the costs of necessary equipment, subscriptions and labor involved.

HISTORY: Codes, 1880, § 1827; 1892, § 481; 1906, § 531; Hemingway's 1917, § 288; 1930, § 349; 1942, § 1260; Laws, 1972, ch. 382, § 1; Laws, 1994, ch. 521, § 10, eff from and after passage (approved March 25, 1994).

Cross References — Summons by publication, see §§ 13-3-27, 13-3-31, and 13-3-32.
Publication of notice to creditors of estates of decedent, see §§ 91-7-49, 91-7-145, 91-7-147.

JUDICIAL DECISIONS

1. In general.
That notice was given taxpayers that rolls were open to objections could not be shown by copies of newspaper filed in chancery clerk's office. Henderson Molpus Co. v. Gammill, 149 Miss. 576, 115 So. 716, 1928 Miss. LEXIS 61 (Miss. 1928).

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-169. All records and papers subject to inspection.

Except as otherwise provided in Section 25-61-11.2, all of the records and papers of the office of the chancery clerk shall, at all reasonable hours on business days, be subject to the inspection and examination of all citizens; and the clerk shall show to any person inquiring for it where any record or paper in his or her office can be found, and shall allow him or her access to it, and to examine it and make any copy, note, or memorandum he or she desires to make of it.

HISTORY: Codes, 1880, § 1826; 1892, § 480; 1906, § 530; Hemingway's 1917, § 287; 1930, § 350; 1942, § 1261; Laws, 2019, ch. 443, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment added the exception at the beginning; substituted "inquiring" for "enquiring"; inserted "or her" and "or she"; and made a minor stylistic change.

JUDICIAL DECISIONS

1. In general.

In view of public policy to encourage small holdings in fee, equality among heirs, activity of sales, and freedom of transfers, and the fact that the statutes provide for recording of instruments affecting title to land, and charge the public with notice of such instruments and their contents, the law should be liberalized as to the right of inspection of records and making copies thereof. Logan v. Mississippi Abstract Co., 190 Miss. 479, 200 So. 716, 1941 Miss. LEXIS 68 (Miss. 1941).

The right to make copies of public records is restricted as to time to "all reasonable hours on business days," and as to methods, so as not to interfere unduly with the use of the records by the public, or with the clerk in the discharge of his duties, or materially to lessen the compensation of the clerk. Logan v. Mississippi Abstract Co., 190 Miss. 479, 200 So. 716, 1941 Miss. LEXIS 68 (Miss. 1941).

The word "copy" in the statute includes photographic copies. Logan v. Mississippi Abstract Co., 190 Miss. 479, 200 So. 716, 1941 Miss. LEXIS 68 (Miss. 1941).

A Mississippi corporation, chartered to own, use, make and keep a full set of abstract books and records, by which to make and compile abstracts of title and ownership maps covering the real estate in the state, and in connection therewith, to make copies of public records by all means and devices, had the right to examine and make photostatic copies of the records of Coahoma County, although such corporation had no special existing or prospective interest in any lands in such county nor present employment to examine and copy the records. Logan v. Mississippi Abstract Co., 190 Miss. 479, 200 So. 716, 1941 Miss. LEXIS 68 (Miss. 1941).

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abstracts of Title §§ 3, 4.

CJS.

1 C.J.S., Abstracts of Title §§ 6, 7.

§ 9-5-171. Destruction of records.

(1) The chancery clerk of each of the counties of the State of Mississippi, with the approval of the board of supervisors of such county, after an inventory has been made and checked by the board and an order spread on its minutes listing the reference, is authorized to dispose of records pursuant to a records control schedule approved by the Local Government Records Committee as provided in Section 25-60-1.

(2) No records which are in the process of being audited by the State Department of Audit or which are the basis of litigation shall be destroyed

until at least twelve (12) months after final completion of the audits and litigation.

(3) Records may be filed and retained by electronic means as provided in Sections 9-1-51 through 9-1-57, whether the record is to be destroyed or not; provided, however, that destruction of records shall be carried out in accordance with Sections 25-59-21 and 25-59-27.

HISTORY: Codes, 1942, § 1261.5; Laws, 1952, ch. 208, §§ 1-3; Laws, 1966, ch. 337, §§ 1-3; Laws, 1987, ch. 420; Laws, 1994, ch. 521, § 11; Laws, 1996, ch. 537, § 7; Laws, 1998, ch. 439, § 1; Laws, 2006, ch. 495, § 5, eff from and after July 1, 2006.

Cross References — Authority of Supreme Court clerk to destroy old records on appeal, see § 9-3-25.

Provision for formulation of records control schedules for courts and requirement that director of department of archives and history be consulted prior to destruction of records, see § 25-59-17.

OPINIONS OF THE ATTORNEY GENERAL

Jackson County Adult Detention Center inmate requests for sick call are not on list of enumerated records in this section and may be legally destroyed when they are no longer of benefit to the agency. Evans, April 29, 1997, A.G. Op. #97-0100.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-173. Register of claims against estates.

The clerk shall keep in his office a well-bound book, or by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, as the clerk may elect, to be called the "Register of Claims," each page of which shall be divided into five (5) columns, the first to contain the creditor's name, the second the description of the claim, the third the time when due, the fourth the amount of the claim, and the fifth the day of the registry. He shall register in said book all claims proved and allowed against any estate administered in his court.

HISTORY: Codes, 1871, § 996; 1880, § 1822; 1892, § 477; 1906, § 526; Hemingway's 1917, § 283; 1930, § 335; 1942, § 1246; Laws, 1994, ch. 521, § 12, eff from and after passage (approved March 25, 1994).

Cross References — Jurisdiction of court to determine all matters in estates administered, see § 9-5-83.

Duty of clerk to docket matters testamentary, see § 9-5-203.

Limitation of time for filing claims against estate of deceased person, see §§ 91-7-151, 91-7-153.

Method of probating claims, see § 91-7-149.

Examination and adjudication of claims, see § 91-7-269.

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 535 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 611-628.

CJS.

33 C.J.S., Executors and Administrators §§ 540-556, 558-563, 565-587.

DOCKETS

Sec.

9-5-201.	Dockets to be kept; general docket, and other entries therein.
9-5-203.	Matters testamentary, etc., to be docketed.
9-5-205.	Issue docket.
9-5-207 through 9-5-211.	Repealed.
9-5-213.	Motion docket and entries.
9-5-215.	Loose leaf docket.
9-5-217.	Execution docket and entries therein.

§ 9-5-201. Dockets to be kept; general docket, and other entries therein.

(1) The clerk shall keep a general docket in which he shall enter the names of the parties in each suit, the time of filing the complaint, petition or answer, and all other papers in the cause, the issuance and return of process, and a note of reference to all orders made therein by the book and page. He shall mark on the papers in every cause the style and number of the suit, and the time when and the party by whom filed. All the papers and pleadings filed in a cause shall be kept in the same file, and all the files kept in numerical order. The general docket shall be duly indexed, both direct and indirect, in the alphabetical order of the names of the parties, and each of them, so that the page of the docket containing the entries in each cause may be readily found.

(2) The general docket required to be kept by this section and all other dockets or records required by law to be kept by the chancery clerk may be kept on computer in lieu of any other physical docket, record or well-bound book if all such dockets and records are kept by computer in accordance with regulations prescribed by the Administrative Office of Courts.

HISTORY: Codes, 1857, ch. 62, art. 16; 1871, § 992; 1880, § 1809; 1892, § 463; 1906, § 512; Hemingway's 1917, § 269; 1930, § 328; 1942, § 1238; Laws, 1964, ch. 308; Laws, 1991, ch. 573, § 8; Laws, 1994, ch. 521, § 13; Laws, 1994, ch. 458, § 10, eff from and after July 1, 1994.

Cross References — Alternate manner of keeping docket, see § 9-5-215.

Form of lis pendens docket, see § 11-47-15.

Chancery clerk maintaining a general docket for the Chancery Court, see Miss. R. Civ. P. 79.

Setting of causes for trial, see Miss. Uniform Chancery Court Rule 3.01.

Clerk's duty to maintain the general docket, see Miss. Uniform Chancery Court Rule 9.01.

Clerk's duty to securely maintain all disputed documents, see Miss. Uniform Chancery Court Rule 9.04.

§ 9-5-203. Matters testamentary, etc., to be docketed.

The clerk shall place on the general docket all applications made and proceedings had in said court in matters testamentary, of administration, in minors' business, and in cases of persons of unsound mind, by entering the name of the person whose estate is the subject of the application or proceedings, the time of filing the application or other paper, the nature of it in brief terms, the issuance and return of process, if any, or publication and proof of it, and a note of reference to all orders made by the clerk or court, by the book and page, so that by reference to such docket the history of the administration of such estate may be traced.

Such docket may be kept on computer as provided in Section 9-5-201.

HISTORY: Codes, 1880, § 1810; 1892, § 464; 1906, § 513; Hemingway's 1917, § 270; 1930, § 329; 1942, § 1239; Laws, 1994, ch. 521, § 14; Laws, 1994, ch. 458, § 11, eff from and after July 1, 1994.

Cross References — Jurisdiction of chancery court to determine all matters in estates administered, see § 9-5-83.

Index and filing of all estate matters finally disposed of, see § 19-15-7.

Duty of clerk to list defaulting executors, administrators, and guardians, see § 91-7-283.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-205. Issue docket.

The chancery clerk shall keep an issue docket in which he shall set down (1) all causes triable according to due course at the instant term and (2) such other causes for final hearings as may be ordered (a) by the court or (b) by consent of all the parties. And he shall also place on said docket all petitions for the sale of the estates of decedents, minors and persons of unsound mind; all proceedings representing estates to be insolvent; final accounts of executors, administrators and guardians and petitions for distribution of an estate or payment of a legacy and all other similar matters in which an order or decree of the court is sought in matters testamentary, of administration, or guardianship, and wherein the issuance of process or notice is necessary to the final hearing on the matter so set down.

Such docket may be kept on computer as provided in Section 9-5-201.

HISTORY: Codes, 1942, § 1240; Laws, 1938, Ex. ch. 53; Laws, 1994, ch. 521, § 15; Laws, 1994, ch. 458, § 12, eff from and after July 1, 1994.

Cross References — Alternate manner of keeping docket, see § 9-5-215.

Precedence on docket of suits to compel public access to public records, see § 25-61-13.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§§ 9-5-207 through 9-5-211. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.
§ 9-5-207. [Codes, 1942, § 1241; Laws, 1938, Ex. ch. 53]
§ 9-5-209. [Codes, 1942, § 1242; Laws, 1938, Ex. ch. 53]
§ 9-5-211. [Codes, 1942, § 1243; Laws, 1938, Ex. ch. 53]

Editor's Notes — Former § 9-5-207 directed the clerk to enter causes on the issue docket in the order in which they are numbered, without the need of a request of any party.

Former § 9-5-209 authorized the court to cause to be entered in the issue docket any cause which the clerk omitted to enter.

Former § 9-5-211 directed that the issue docket be called for trial as in the circuit court.

§ 9-5-213. Motion docket and entries.

The clerk shall also keep a motion docket in which he shall, in the order in which they are filed, docket as of course and without request, all demurrers, motions, ex parte petitions, exceptions to evidence or reports, and all matters pertaining to administration or guardianship not directed to be placed on the issue docket. He shall also place on the motion docket all matters brought before him in vacation when presented, and, at the next term of the court, all such matters on said docket shall be examined and disposed of by the court by approving or disapproving the same.

Such docket may be kept on computer as provided in Section 9-5-201.

HISTORY: Codes, 1942, § 1244; Laws, 1938, Ex. ch. 53; Laws, 1994, ch. 521, § 16; Laws, 1994, ch. 458, § 13, eff from and after July 1, 1994.

Cross References — Rules relative to motion day and to books and records kept by clerk, see Miss. R. Civ. P. 78 and Miss. R. Civ. P. 79, respectively.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 29.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-5-215. Loose leaf docket.

Any chancellor in this state may, by an order made and entered on the minute book of the chancery court in each of said counties in his district, require the docket of said court to be provided and kept as follows:

(a) The clerk shall provide and keep, for the use of the chancellor, a loose leaf judge's docket, in which he shall enter, on a separate sheet, each matter or cause now pending in the court, or hereafter instituted therein, together with a chronological list of all pleadings, orders and decrees in each such matter or cause.

(b) The sheets on which the various matters or causes are entered shall be arranged in such docket as the chancellor may direct, and shall remain therein until each matter or cause is finally disposed of, when the sheet containing the entries concerning the same shall be removed, and placed in numerical order in a transfer binder.

(c) All litigated or contested matters or causes appearing on the judge's docket, which are triable by law, or by consent, at any term, shall be set for trial by the chancellor at such time during the term as he may direct. Provided, however, when any chancellor has entered an order on the minute book of the chancery court of the counties in his district requiring the docket of said court to be kept, as provided in this section, Sections 9-5-205 through 9-5-213 shall not apply to the chancery court of said district.

Such docket may be kept on computer as provided in Section 9-5-201.

HISTORY: Codes, 1942, § 1245; Laws, 1938, ch. 266; Laws, 1938, Ex. ch. 53; Laws, 1994, ch. 521, § 17; Laws, 1994, ch. 458, § 14, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts § 25.

CJS.
21 C.J.S., Courts § 248.

§ 9-5-217. Execution docket and entries therein.

The clerk shall keep an execution docket in the manner required of the clerk of the circuit court, in which he shall enter all final process issued by him, and record at large the returns that may be made thereon.

HISTORY: Codes, 1880, § 1813; 1892, § 467; 1906, § 516; Hemingway's 1917, § 273; 1930, § 336; 1942, § 1247.

Cross References — Execution docket of circuit court, see § 9-7-181.
Execution docket kept by sheriff, see § 19-25-61.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts, § 25.

CJS.
21 C.J.S., Courts, § 248.

FAMILY MASTERS

Sec.
9-5-241 through 9-5-253. Repealed.
9-5-255. Family masters; appointment, qualifications, powers, and duties.

§§ 9-5-241 through 9-5-253. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-5-241. [Codes, Hutchinson's 1848, ch. 54, art. 2 (25); 1857, ch. 62, art. 79; 1871, § 1057; 1880, § 1927; 1892, § 584; 1906, § 635; Hemingway's 1917, § 395; 1930, § 445; 1942, § 1365]

§ 9-5-243. [Codes, Hutchinson's 1848, ch. 54 art. 2(27); 1857, ch. 62, art. 81; 1871, § 1059; 1880, § 1929; 1892, § 586; 1906, § 637; Hemingway's 1917, § 399; 1930, § 446; 1942, § 1366; Laws, 1962, ch. 286, § 1; Laws, 1968, ch. 324; Laws, 1971, ch. 306, § 1]

§ 9-5-245. [Codes, Hutchinson's 1848, ch. 54, art. 2(28); 1857, ch. 62, art. 82; 1871, § 1060; 1880, § 1930; 1892, § 587; 1906, § 638; Hemingway's 1917, § 400; 1930, § 447; 1942, § 1367]

§ 9-5-247. [Codes, 1857, ch. 62, art. 85; 1871, § 1063; 1880, § 1933; 1892, § 590; 1906, § 641; Hemingway's 1917, § 403; 1930, § 448; 1942, § 1368]

§ 9-5-249. [Codes, Hutchinson's 1848, ch. 54, art. 2 (29); 1857, ch. 62, art. 84; 1871, § 1062; 1880, § 1931; 1892, § 588; 1906, § 639; Hemingway's 1917, § 401; 1930, § 449; 1942, § 1369]

§ 9-5-251. [Codes, 1857, ch. 62, art. 80; 1871, § 1058; 1880, § 1928; 1892, § 585; 1906, § 636; Hemingway's 1917, § 396; 1930, § 451; 1942, § 1371]

§ 9-5-253. [Codes, 1880, § 1932; 1892, § 589; 1906, § 640; Hemingway's 1917, § 402; 1930, § 452; 1942, § 1372]

Editor's Notes — Former § 9-5-241 authorized the appointment of masters of the chancery court.

Former § 9-5-243 specified the powers of the masters.

Former § 9-5-245 granted masters the power to subpoena witness.

Former § 9-5-247 authorized the chancellor to direct an accounting in any cause, and specified the manner in which a master could express doubts concerning the accounting.

Former § 9-5-249 authorized masters to charge a fee for providing copies of reports or other papers.

Former § 9-5-251 authorized the appointment of special commissioners.

Former § 9-5-253 authorized the court to require bonds of masters or special commissioners.

§ 9-5-255. Family masters; appointment, qualifications, powers, and duties.

(1) Except as provided by subsection (9) of this section, the senior chancellor of each chancery court district in the state may apply to the Chief Justice of the Supreme Court for the appointment of one or more persons to serve as family masters in chancery in each of the counties or for all of the counties within the respective chancery court district if the senior chancellor states in writing that the chancery court district's docket is crowded enough to warrant an appointment of a family master. The Chief Justice shall determine from the information provided by the senior chancellor if the need exists for the appointment of a family master. If the Chief Justice determines that the need exists, a family master shall be appointed. If the Chief Justice determines that the need does not exist, no family master shall be appointed.

(2) Family masters in chancery shall have the power to hear cases and recommend orders establishing, modifying and enforcing orders for support in matters referred to them by chancellors and judges of the circuit, county or family courts of such county. The family master in chancery shall have jurisdiction over paternity matters brought pursuant to the Mississippi Uniform Law on Paternity and referred to them by chancellors and judges of the circuit, county or family courts of such county. As used in this section, "order for support" shall have the same meaning as such term is defined in Section 93-11-101.

(3) In all cases in which an order for support has been established and the person to whom the support obligation is owed is a nonrelated Temporary Assistance for Needy Families (TANF) family on whose behalf the Department of Human Services is providing services, the family master in chancery or any other judge or court of competent jurisdiction shall, upon proper pleading by the department and upon appropriate proceedings conducted thereon, order that the department may recover and that the obligor shall be liable for reasonable attorney's fees at a minimum of Two Hundred Fifty Dollars ($250.00) or an amount set by the court and court costs which the department incurs in enforcing and collecting amounts of support obligation which exceed administrative fees collected and current support owed by the obligor.

(4) Persons appointed as family masters in chancery pursuant to this section shall meet and possess all of the qualifications required of chancery and circuit court judges of this state, shall remain in office at the pleasure of the appointing chancellor, and shall receive reasonable compensation for services rendered by them, as fixed by law, or allowed by the court. Family masters in chancery shall be paid out of any available funds budgeted by the board of supervisors of the county in which they serve; provided, however, in the event that a family master in chancery is appointed to serve in more than one county within a chancery court district, then the compensation and expenses of such master shall be equally apportioned among and paid by each of the counties in which such master serves. The chancery clerk shall issue to such persons a certificate of appointment.

(5) Family masters in chancery shall have power to administer oaths, to take the examination of witnesses in cases referred to them, to examine and report upon all matters referred to them, and they shall have all the powers in cases referred to them properly belonging to masters or commissioners in chancery according to the practice of equity courts as heretofore exercised.

(6) Family masters in chancery shall have power to issue subpoenas for witnesses to attend before them to testify in any matter referred to them or generally in the cause, and the subpoenas shall be executed in like manner as subpoenas issued by the clerk of the court. If any witness shall fail to appear, the master shall proceed by process of attachment to compel the witness to attend and give evidence.

(7) Family masters in chancery are authorized and empowered to conduct original hearings on matters in such county referred to such masters by any chancellor or judge of such county.

(8) In all cases heard by masters pursuant to this section, such masters shall make a written report to the chancellor or judge who refers the case to him. Such chancellor or judge may accept, reject or modify, in whole or in part, the findings or recommendations made and reported by the master, and may recommit the matter to the master with instructions. In all cases referred to such master, initialing for approval by the master of a proposed decree shall be sufficient to constitute the master's report.

(9) Any chancellor required by this section to appoint a person or persons to serve as family masters in chancery may forego the requirement to appoint such masters or if family masters have been appointed, such chancellor may terminate such appointments and leave such positions vacant, only if an exemption from the United States Department of Health and Human Services is obtained for the county or counties involved. Such positions may remain vacant for as long as such exemption remains in effect.

HISTORY: Laws, 1985, ch. 518, § 11; Laws, 1986, ch. 474, § 1; Laws, 1989, ch. 440, § 3; Laws, 1994, ch. 564, § 75; Laws, 1997, ch. 316, § 14; Laws, 2003, ch. 514, § 7, eff from and after passage (approved Apr. 19, 2003).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Chapter 564, Laws of 1994.

Laws of 1999, ch. 432, § 1, provides:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

By letter dated May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965 to the changes made by Chapter 432, Laws of 1999. For a complete list of sections affected by Chapter 432, Laws of 1999, see the Statutory Tables Volume, Table B, Allocation of Acts.

Cross References — Qualifications of chancery and circuit court judges, see Miss. Const. Art. 6, § 154 and Code § 9-1-23.

Department of Human Services generally, see § 43-1-1 et seq.

Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

Mississippi Uniform Law on Paternity, see §§ 93-9-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

A county court judge may be appointed as a family master and receive additional compensation from the county beyond the compensation that is received for being a county court judge. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

The Chief Justice can execute a Memorandum of Understanding on behalf of all appointed family masters allowing the Child Support Maximization Project to use the monies paid to the family masters by the counties as a source for federal matching funds. Lackey, Nov. 15, 2004, A.G. Op. 04-0554.

Senate Bill 2339 of 2005 [Chapter 501, Laws of 2005] does not, by its express terms, amend, modify or repeal Sections 9-5-255 and 41-21-61 (a). Miller, Aug. 2, 2005, A.G. Op. 05-0206.

RESEARCH REFERENCES

ALR.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

CHAPTER 7.

CIRCUIT COURTS

Judges, Districts, and Terms of Court. 9-7-1
Jurisdiction, Powers and Authority. 9-7-81
Circuit Clerks. 9-7-121
Dockets. 9-7-171
Circuit Court Community Corrections Act of 2010. 9-7-201

JUDGES, DISTRICTS, AND TERMS OF COURT

Sec.	
9-7-1.	Judges; election; holding of terms of court; term of office; residence.
9-7-3.	Circuit court districts and terms of court; number of judges; powers and duties of judges.
9-7-5.	First district; composition.
9-7-7.	First district; number of judges.
9-7-9.	Second district; composition.
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9-7-13.	Third district; composition.
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9-7-17.	Fourth district; number and election of judges.
9-7-18.	Repealed.
9-7-19.	Fifth district; composition.
9-7-20.	Fifth district; number of judges.
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9-7-23.	Seventh district; composition; divisions.
9-7-25.	Seventh district; number and election of judges; powers and duties of judges.
9-7-27.	Eighth district; composition.
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9-7-30.	Ninth district; number and election of judges.
9-7-31.	Tenth district; composition.
9-7-32.	Tenth district; number of judges.
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9-7-34.	Eleventh district; number and election of judges.
9-7-35.	Twelfth district; composition.
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9-7-39.	Fourteenth district; composition; number of judges.
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9-7-43.	Sixteenth district; composition.
9-7-44.	Sixteenth district; number of judges.
9-7-45.	Seventeenth district; composition; divisions.
9-7-46.	Seventeenth district; number and election of judges.
9-7-47.	Eighteenth district; composition.
9-7-49.	Nineteenth district; composition; local contributions for support of court.
9-7-51.	Nineteenth district; number and election of judges; divisions.
9-7-53.	Twentieth district; composition.
9-7-54.	Twentieth district; number of judges.
9-7-55.	Twenty-first district; composition.

Sec.
9-7-57. Twenty-second district; composition.

§ 9-7-1. Judges; election; holding of terms of court; term of office; residence.

A circuit judge shall be elected for and from each circuit court district and the listing of individual precincts shall be those precincts as they existed on October 1, 1990. He may hold court in any other district with the consent of the judge thereof, when in their opinion the public interest may require. The terms of all circuit judges hereafter elected shall begin on the first day of January 1931 and their terms of office shall continue for four (4) years. A circuit judge shall be a resident of the district in which he or she serves but shall not be required to be a resident of a subdistrict if the district is divided into subdistricts.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 6 (3, 12); 1857, ch. 61, arts. 7, 8; 1871, §§ 526, 531; 1880, § 1483; 1892, § 631; 1906, § 689; Hemingway's 1917, § 467; 1930, § 476; 1942, § 1414; Laws, 1994, ch. 564, § 37; Laws, 2002, ch. 356, § 2. (See Editor's note).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 37.

Laws 2002, ch. 713 (Senate Concurrent Resolution No. 543), provides in pertinent part:

"BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the following amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state:

"Amend Section 153, Mississippi Constitution of 1890, to read as follows:

"'Section 153. The judges of the circuit and chancery courts shall be elected by the people in a manner and at a time to be provided by the Legislature. The judges elected for a term of office beginning from and after January 1, 2003, shall hold their office for a term of six (6) years.'

"BE IT FURTHER RESOLVED, That this proposed amendment shall be submitted by the Secretary of State to the qualified electors at an election to be held on the first Tuesday after the first Monday of November 2002, as provided by Section 273 of the Constitution and by general law.

"BE IT FURTHER RESOLVED, That the explanation of this proposed amendment for the ballot shall read as follows: 'This proposed constitutional amendment increases the terms of office of circuit and chancery court judges from four to six years beginning January 1, 2003.'

"BE IT FURTHER RESOLVED, That the Attorney General of the State of Mississippi shall submit this resolution, immediately upon adoption by the Legislature, to the Attorney General of the United States or to the United States District Court for the District of Columbia, in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 63, provides in part:

"SECTION 63. (1) The Standing Joint Legislative Committee on Reapportionment is directed to provide the counties census block equivalency files and maps necessary to assist the counties in identifying the boundaries of any subdistricts within a chancery or circuit court district.

"(2)(a) The Split Precinct Block List developed in conjunction with House Bill No. 703, 2015 Regular Session [Chapter 476, Laws of 2015], that details the portions of the partial or split precincts that are contained within a judicial subdistrict by census block number as that list is utilized to detail partial or split precincts for judicial subdistricts in this act is hereby incorporated into and shall be construed to be an integral part of this act. A partial or split precinct contained in this act is identified by an asterisk (*) following its designation within any judicial subdistrict. The Standing Joint Legislative Committee on Reapportionment shall file the Split Precinct Block List with the Secretary of State.

"(3)(a) This act shall be liberally construed to effectuate the purposes hereof and to redistrict the trial courts of this state in compliance with constitutional requirements.

"(b) It is intended that this act and the districts and subdistricts described herein completely encompass all the area within the state and all the voters in this state. It is also intended that no district shall include any of the area included within the description of any other district, and that no subdistrict shall include any of the area included within the description of any other subdistrict.

"(c)(i) If the districts or subdistricts described in this act do not carry out the purposes hereof because of: omissions; duplication; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards or other divisions thereof, or of their boundary lines; then the Secretary of State, at the joint request of the Lieutenant Governor and the Speaker of the House, by order, shall correct any omissions, overlaps, erroneous nomenclature or other defects in the description of the districts and subdistricts so as to accomplish the purposes and objectives of this act.

"(ii) In promulgating any order under this subsection (3), the Secretary of State, in addition to insuring that all areas of the state are completely and accurately encompassed in the districts and subdistricts, shall be guided by the following standards:

"1. Gaps in the description of any district or subdistrict shall be completed in a manner that results in a total description of the district or subdistrict that is consonant with the description of adjacent districts or subdistricts and results in complete contiguity of districts and subdistricts;

"2. In any allocation of area or correction of descriptions made pursuant to this subsection, the Secretary of State shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and subdistricts and avoid the unnecessary division of political subdivisions.

"(d) A copy of any order issued under this subsection shall be filed by the Secretary of State in his own office and in the offices of the affected commissioners of election and registrars. The Secretary of State may adopt reasonable rules regulating the procedure for applications for orders under this act and the manner of serving and filing any notice or copy of orders. Upon the filing of an order, the description of any affected district or subdistrict shall be deemed to have been corrected to the full extent as if the correction had been contained in the original description set forth in this act.

"(e) The redistricting contained in this act supersedes any prior redistricting."

Laws of 2015, ch. 476, § 63, was enacted with a subdivision (2)(a) but no (2)(b).

Chapter 476, Laws of 2015 amended a number of sections in Chapters 5 and 7 of Title 9. For a complete list of Code sections affected by Chapter 476, Laws of 2015, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Constitutional authority for the election and term of office of circuit judges, see Miss. Const. Art. 6, § 153.

Prohibition against judge having interest in cause or being related to parties sitting in cases, see § 9-1-11.

Proceedings when judge is disabled or disqualified, see § 9-1-11.

Required residence within the district, see § 9-1-23.

Prohibition against practice of law, see § 9-1-25.

Civil practice and procedure provisions common to courts, see § 11-1-1 et seq.

Civil practice and procedure in circuit courts generally, see § 11-7-1 et seq.

Provisions for filling vacancies in the office of circuit judge, see § 23-15-849.

Violation of gambling laws by judge, see § 97-33-3.

Criminal procedure generally, see § 99-1-1 et seq.

Relief under Mississippi Uniform Post-Conviction Collateral Relief Act, see § 99-39-1 et seq.

Rules governing practice and procedure in circuit courts, see Miss. Uniform Rules of Circuit and County Court Practice 1.01 et seq.

JUDICIAL DECISIONS

1. In general.

State judicial elections come within coverage of "results test" provisions of § 2 of Voting Rights Act of 1965 (42 USCS § 1973), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348, 1991 U.S. LEXIS 3627 (U.S. 1991).

The record need not show that the "public interest" required the interchange. Fletcher v. State, 60 Miss. 675, 1882 Miss. LEXIS 112 (Miss. 1882).

RESEARCH REFERENCES

ALR.

Power of successor judge taking office during termtime to vacate, etc., judgment entered by his predecessor. 11 A.L.R.2d 1117.

Power of court to impose standard of personal appearance or attire. 73 A.L.R.3d 353.

Am. Jur.

46 Am. Jur. 2d (Rev), Judges §§ 5- 19.

CJS.

48A C.J.S., Judges §§ 20-79, 81-122, 124-135.

Law Reviews.

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

§ 9-7-3. Circuit court districts and terms of court; number of judges; powers and duties of judges.

(1) The state is divided into an appropriate number of circuit court districts severally numbered and composed of the counties as set forth in the sections which follow. A court to be styled "The Circuit Court of the County of ________" shall be held in each county, and within each judicial district of a county having two (2) judicial districts, at least twice a year. Court shall be held in circuit court districts consisting of a single county on the same dates state agencies and political subdivisions are open for business excluding legal holidays. The dates upon which terms shall commence and the number of days for which the terms shall continue in circuit court districts consisting of more than one (1) county shall be set by order of the circuit court judge in accordance

with the provisions of subsection (2) of this section. A matter in court may extend past a term if the interest of justice so requires.

(2) An order establishing the commencement and continuation of terms of court for each of the counties within a circuit court district consisting of more than one (1) county shall be entered annually and not later than October 1 of the year immediately preceding the calendar year for which the terms of court are to become effective. Notice of the dates upon which the terms of court shall commence and the number of days for which the terms shall continue in each of the counties within a circuit court district shall be posted in the office of the circuit clerk of each county within the district and mailed to the office of the Secretary of State for publication and distribution to all Mississippi Bar members. If an order is not timely entered, the terms of court for each of the counties within any circuit court district shall remain unchanged for the next calendar year. A certified copy of any order entered under the provisions of this subsection shall, immediately upon the entry thereof, be delivered to the clerk of the board of supervisors in each of the counties within the circuit court district.

(3) The number of judges in each circuit court district shall be determined by the Legislature based upon the following criteria:

(a) The population of the district;

(b) The number of cases filed in the district;

(c) The case load of each judge in the district;

(d) The geographic area of the district;

(e) An analysis of the needs of the district by the court personnel of the district; and

(f) Any other appropriate criteria.

(4) The Judicial College of the University of Mississippi Law Center and the Administrative Office of Courts shall determine the appropriate:

(a) Specific data to be collected as a basis for applying the above criteria;

(b) Method of collecting and maintaining the specified data; and

(c) Method of assimilating the specified data.

(5) In a district having more than one (1) office of circuit judge, there shall be no distinction whatsoever in the powers, duties and emoluments of those offices except that the judge who has been for the longest time continuously a judge of that court or, should no judge have served longer in office than the others, the judge who has been for the longest time a member of The Mississippi Bar, shall be the senior judge. The senior judge shall have the right to assign causes and dockets and to set terms in districts consisting of more than one (1) county. A circuit court judge shall have the right to assign criminal matters to county court as provided in Section 9-9-21.

HISTORY: Codes, 1930, § 473; 1942, § 1394; Laws, 1931, ch. 37; Laws, 1934, ch. 180; Laws, 1936, ch. 227; Laws, 1936, 1st Ex. ch. 13; Laws, 1954, ch. 254, § 1; Laws, 1971, ch. 344, § 1; Laws, 1984, ch. 443, § 2; Laws, 1985, ch. 502, § 22; Laws, 1994, ch. 564, § 38; Laws, 2013, ch. 361, § 2; Laws, 2015, ch. 476, § 31, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 38.

The effective date of Chapter 361, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 361, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 22, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 361 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 361, so Chapter 361 became effective from and after October 22, 2013, the date of the United States Attorney General's response letter.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Cross References — Constitutional authority for dividing the state into circuit court districts, see Miss. Const. Art. 6, § 152.

Provisions for furniture, equipment, and supplies, see §§ 9-1-35 to 9-1-37.

Chancery court districts, see §§ 9-5-3 et seq.

Authority of circuit court judge to assign criminal matters to county judge, see § 9-9-21.

Exemption of the judiciary from provisions of open meetings law, see § 25-41-3.

JUDICIAL DECISIONS

1. In general.

Although a judge's conduct in entering orders regarding a defendant at the same time the senior judge was also entering orders regarding that defendant in some of the same cases did not evidence the level of civility and professionalism expected of judges, the judge's conduct did not constitute a violation of the statute. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961, 2000 Miss. LEXIS 27 (Miss. 2000).

There has been a vast expansion by statutory enactment of the times within which circuit judges are lawfully empowered to conduct court affairs. Although the Mississippi Constitution contemplates circuit courts being held at fixed, stated terms provided by statute, and the circuit courts of this State have had fixed terms, the legislature by various enactments-§§ 11-1-7 [repealed], 11-7-131 to 133, 11-7-121 [repealed], 11-1-16, and 9-7-3-has granted circuit courts wide latitude in taking official actions in vacation. Griffin v. State, 565 So. 2d 545, 1990 Miss. LEXIS

285 (Miss. 1990), limited, Presley v. State, 792 So. 2d 950, 2001 Miss. LEXIS 153 (Miss. 2001).

Where the business of a circuit court does not require that it sit for the entire length of the term as fixed by statute, the trial of a defendant's appeal was properly dismissed for want of prosecution during the three days which the court sat, and his motion for a new trial was properly overruled. McDowell v. State, 251 Miss. 156, 168 So. 2d 658, 1964 Miss. LEXIS 336 (Miss. 1964).

OPINIONS OF THE ATTORNEY GENERAL

Circuit court must be held within the boundaries of the county. See Sections 9-7-3 and 19-3-43. Lee, August 30, 1996, A.G. Op. #96-0531.

Since § 9-9-35 specifically governs the assignment of cases to a county judge when justified by an overcrowded docket, controls over the more general provision of this section stating that the senior judge has the authority to assign causes and dockets. Yerger, July 23, 2004, A.G. Op. 04-0312.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 20 et seq.

CJS.

21 C.J.S., Courts §§ 148, 149.

§ 9-7-5. First district; composition.

The First Circuit Court District is composed of the following counties:

(a) Alcorn County;
(b) Itawamba County;
(c) Lee County;
(d) Monroe County;
(e) Pontotoc County;
(f) Prentiss County; and
(g) Tishomingo County.

HISTORY: Codes, 1930, § 473; 1942, § 1395; Laws, 1931, ch. 37; Laws, 1934, ch. 180; Laws, 1936, ch. 227; Laws, 1936, 1st Ex. ch. 13; Laws, 1946, ch. 350; Laws, 1950, ch. 329; Laws, 1958, ch. 247; Laws, 1960, ch. 230; Laws, 1968, ch. 325, § 5; Laws, 1972, ch. 410, § 1; Laws, 1981, ch. 487, § 1; Laws, 1985, ch. 502, § 23; Laws, 1994, ch. 564, § 39; Laws, 2015, ch. 476, § 32, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 39.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JUDICIAL DECISIONS

1. In general.

Defendant's offense was charged to have been committed in Lee County, which was in the First Circuit Court District, Miss. Code Ann. § 9-7-5, and any other circuit court in the First Circuit Court District could have accepted defendant's guilty plea, Miss. Code Ann. § 99-15-24; the Monroe County Circuit Court was in the First Circuit Court District, Miss. Code Ann. § 9-7-5, and therefore the Monroe County Circuit Court was an appropriate venue for defendant's guilty plea to the Lee County charge, and thus all of defendant's arguments dependent on the impropriety of the venue for the plea were without merit. Garner v. State, 944 So. 2d 934, 2006 Miss. App. LEXIS 921 (Miss. Ct. App. 2006), cert. dismissed, 951 So. 2d 563, 2007 Miss. LEXIS 534 (Miss. 2007).

§ 9-7-7. First district; number of judges.

(1) There shall be four (4) judges for the First Circuit Court District.

(2) The four (4) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four." The judge to fill Place One must reside in Alcorn, Prentiss or Tishomingo County. The judges to fill Place Two and Place Three must reside in Itawamba, Lee, Monroe or Pontotoc County. The judge to fill Place Four may be a resident of any county in the district. Election of the four (4) offices of judge shall be by election to be held in every county within the First Circuit Court District.

HISTORY: Codes, 1942, § 1395.1; Laws, 1968, ch. 325, §§ 1-4; Laws, 1974, ch. 373, § 2; Laws, 1994, ch. 564, § 40; Laws, 2005, ch. 501, § 9; Laws, 2015, ch. 476, § 33, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 40.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 9.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Cross References — Judicial review of final decisions of employee appeals board, see § 25-9-132.

§ 9-7-9. Second district; composition.

The Second Circuit Court District is composed of the following counties:

(a) Hancock County;

(b) Harrison County; and

(c) Stone County.

HISTORY: Codes, 1930, § 473; 1942, § 1396; Laws, 1931, ch. 37; Laws, 1932, ch. 144; Laws, 1934, ch 181; Laws, 1938, ch. 274; Laws, 1940, ch. 228; Laws, 1948, ch. 249; Laws, 1954, chs. 225, 242; Laws, 1958, ch. 265; Laws, 1962, ch. 288; Laws, 1968, ch. 326, § 1; Laws, 1971, ch. 328, § 1; Laws, 1975, ch. 352; Laws, 1976, ch. 313; Laws, 1979, ch. 332; Laws, 1983, ch. 367, ch. 499, § 2; Laws, 1985, ch. 502, § 24; Laws, 1994, ch. 564, § 41; Laws, 2015, ch. 476, § 34, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 41.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-11. Second district; number and election of judges.

(1) There shall be four (4) judges for the Second Circuit Court District.

(2) The four (4) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," "Place Three" and "Place Four."

HISTORY: Codes, 1942, § 1396.1; Laws, 1968, ch. 326, §§ 2-4; Laws, 1971, ch. 328, § 2; Laws, 1994, ch. 564, § 42; Laws, 2015, ch. 476, § 35, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 42.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of

circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-13. Third district; composition.

The Third Circuit Court District is composed of the following counties:

(a) Benton County;
(b) Calhoun County;
(c) Chickasaw County;
(d) Lafayette County;
(e) Marshall County;
(f) Tippah County; and
(g) Union County.

HISTORY: Codes, 1930, § 473; 1942, § 1397; Laws, 1931, ch. 37; Laws, 1944, ch. 311; Laws, 1964, ch. 310; Laws, 1964, ch. 311; Laws, 1971, ch. 368, § 1; Laws, 1975, ch. 475, § 1; Laws, 1980, ch 432, § 1; Laws, 1985, ch. 502, § 25; Laws, 1994, ch. 564, § 43; Laws, 2015, ch. 476, § 36, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — Laws of 1975, ch. 475, § 2, effective from and after September 1, 1975, provides as follows:

"SECTION 2. All summonses, subpoenas, citations, writs, process and processes of every nature and kind whatsoever which have been heretofore lawfully issued and made returnable to a term of court the date of which is changed by this act shall be legal and valid precisely as if they were made returnable to the terms and dates herein fixed; provided, however, that in all instances where the time for appearance or pleading is shortened by the changes of court terms herein made, such appearance or pleading shall be due on the first day of the next succeeding term of court."

Laws of 1980, ch. 432, § 2 effective from and after July 1, 1980, provides as follows:

"SECTION 2. All summonses, subpoenas, citations, writs, process and processes of every nature and kind whatsoever which have been heretofore lawfully issued and made returnable to a term of court the date of which is changed by this act shall be legal and valid precisely as if they were made returnable to the terms and dates herein fixed; provided, however, that in all instances where the time for appearance or pleading is shortened by the changes of court terms herein made, such appearance or pleading shall be due on the first day of the next succeeding term of court."

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 43.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JUDICIAL DECISIONS

1. In general.

Order in effect adjourning regular term of circuit court of Calhoun County to later day, pursuant to which sheriff and clerk adjourned court, held valid. Mississippi & S. V. R. Co. v. Brown, 160 Miss. 123, 132 So. 556, 1931 Miss. LEXIS 124 (Miss. 1931).

Where circuit court of Lafayette County undertook to hold special term of court for criminal business during the time provided by this section to be devoted exclusively to civil business and in which no grand jury is to be impaneled, the impaneling and proceedings of the grand jury thereat were a nullity and indictment of defendant for murder was a nullity. Williams v. State, 156 Miss. 346, 126 So. 40, 1930 Miss. LEXIS 181 (Miss. 1930).

§ 9-7-14. Third district; number of judges.

(1) There shall be three (3) judges for the Third Circuit Court District.

(2) The three (3) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three."

HISTORY: Laws, 1975, ch. 474, § 1; Laws, 1994, ch. 564, § 44; Laws, 2005, ch. 501, § 10; Laws, 2015, ch. 476, § 37, eff from and after passage (approved Apr. 22, 2015); Laws, 2019, ch. 456, § 1, eff from and after passage (approved April 16, 2019).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 44.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 10.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2019, ch. 456 § 2, effective April, 16, 2019, provides:

"SECTION 2. Section 1 of this act applies to the regular judicial election to be held in November 2022 for the Third Circuit Court District, to any special election held before November 2022, and to any election that occurs thereafter for the Third Circuit Court District."

Amendment Notes — The 2019 amendment deleted the last three sentences of (2), which read: "The judge to fill "Place One" must be a resident of Calhoun, Chickasaw, Lafayette or Union County. The judge to fill "Place Two" must be a resident of Benton, Marshall or Tippah County. The judge to fill "Place Three" may be a resident of any county in the district." For applicability, see Editor's note.

§ 9-7-15. Fourth district; composition; divisions; local contributions for support of court.

(1) The Fourth Circuit Court District shall be composed of the following counties:

(a) Leflore County;

(b) Sunflower County; and

(c) Washington County.

(2) The Fourth Circuit Court District shall be divided into four (4) subdistricts as follows:

(a) Subdistrict 4-1 shall consist of the following precincts in the following counties:

(i) Leflore County: Minter City, North Greenwood, Money, Northeast Greenwood, Schlater, West Greenwood, Mississippi Valley State University and Southeast Greenwood Precincts; and

(ii) Sunflower County: Ruleville, Rome, Sunflower Plantation, Drew, Doddsville, Boyer-Linn, Fairview-Hale and Ruleville North Precincts.

(b) Subdistrict 4-2 shall consist of the following precincts in the following counties:

(i) Sunflower County: Indianola 1, Sunflower, Indianola 3 North, Indianola 3 South and Indianola 3 Northeast Precincts; and

(ii) Washington County: Extension Building, Faith Lutheran Church, American Legion, Metcalfe City Hall, Elks Club, Leland Health Department Clinic, Leland Light and Water Plant and Greenville Industrial College Precincts.

(c) Subdistrict 4-3 shall consist of the following precincts in the following counties:

(i) Leflore County: East Greenwood Sub-A, East Greenwood Sub-B, Central Greenwood, North Itta Bena, South Itta Bena, Southwest Greenwood, Rising Sun, Sidon, Morgan City, Swiftown and South Greenwood Precincts;

(ii) Sunflower County: Moorhead, Inverness, Indianola 2 West and Indianola 2 East Precincts; and

(iii) Washington County: Arcola City Hall, Hollandale City Hall, Darlove Baptist Church and Mangelardi Bourbon Store Precincts.

(d) Subdistrict 4-4 shall consist of the following precincts in Washington County: St. James Episcopal Church, Swiftwater Baptist Church, Glen Allan

Health Clinic, Italian Club, Ward's Recreation Center, Buster Brown Community Center, Avon Health Center, Kapco Company, Brent Center, William Percy Library and Grace Methodist Church Precincts.

(3) The local contributions required for the maintenance of the Fourth Circuit Court District shall be paid on a pro rata basis each by Leflore, Sunflower and Washington Counties.

HISTORY: Codes, 1930, § 473; 1942, § 1398; Laws, 1931, Ex. ch. 37; Laws, 1932, ch. 214; Laws, 1934, ch. 182; Laws, 1942, ch. 314; Laws, 1944, ch. 312; Laws, 1959, Ex. ch. 25; Laws, 1964, ch. 312; Laws, 1968, ch. 327, § 2; Laws, 1983, ch. 499, § 3; Laws, 1985, ch. 502, § 26; Laws, 1994, ch. 564, § 45, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 45.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Validity of term of court.

1. In general.

The assumption is that the legislature was aware of the rule declared by the supreme court that where there is but one judge of a judicial district, a term held in one county or part of the district during the time fixed by law for holding a term in another county or part of the district is illegal and the proceedings thereat will not be sustained, and that the legislature did not intent to so arrange the terms in the fourth district that the time of a term in any county in the district would overlap upon the term in any other county therein. Candate v. State, 196 Miss. 711, 18 So. 2d 441, 1944 Miss. LEXIS 252 (Miss. 1944).

By this section the legislature intended to fix, and did fix, for Holmes county a term of four successive weeks beginning each on the first Monday in April and in October. Candate v. State, 196 Miss. 711, 18 So. 2d 441, 1944 Miss. LEXIS 252 (Miss. 1944).

Inasmuch as order made on Tuesday, October 5, 1943, for adjournment or recess to October 18 was to a day within the term, the recess order was expressly authorized by Code 1942 § 1649, and inasmuch as the day to which adjournment or recess had been taken was within the term, the judge was authorized to sign the minutes of October 5th on or during the day next in session, which was on October 18, or on any remaining day in session during the four weeks of the term. Candate v. State, 196 Miss. 711, 18 So. 2d 441, 1944 Miss. LEXIS 252 (Miss. 1944).

Adjournment of the circuit court of Sunflower County, convened in accordance with this section, without trial on felony charge pursuant to indictment returned during term, was not a violation of constitutional right of speedy trial, in that statute (§ 1494, Code 1906), requiring trial of indictments at first term unless good cause shown for continuance, did not prevent subsequent trial within reasonable limits without showing good cause. Heard v. Clark, 156 Miss. 355, 126 So. 43, 1930 Miss. LEXIS 182 (Miss. 1930).

2. Validity of term of court.

The division of time between civil and criminal business as to the circuit court in Leflore County is for convenience in the administration of the business of the court, and does not deprive court of jurisdiction to enter default judgment in civil case during that portion of term allotted for criminal business. Strain v. Gayden, 197 Miss. 353, 20 So. 2d 697, 1945 Miss. LEXIS 295 (Miss. 1945).

Where court in Holmes county convened on first Monday in October and order adjourning until following day was entered and signed by the presiding judge, and at the close of the following day order was made adjourning court until October 18, a day within the term, but the judge did not sign the minutes containing such order on that day, validity of the term and court's right to proceed on later date to conviction in criminal case could not be questioned, since it would be presumed that the judge signed the minutes on the day to which adjournment was taken, and on each succeeding day throughout the term, so long as in session, including those on the last day. Candate v. State, 196 Miss. 711, 18 So. 2d 441, 1944 Miss. LEXIS 252 (Miss. 1944).

§ 9-7-17. Fourth district; number and election of judges.

There shall be four (4) circuit judges for the Fourth Circuit Court District. One (1) circuit judge shall be elected from each subdistrict.

HISTORY: Codes, 1942, § 1398.1; Laws, 1968, ch. 327, § 1; Laws, 1978, ch. 355, § 1; Laws, 1985, ch. 502, § 48; Laws, 1994, ch. 564, § 46, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 46.

§ 9-7-18. Repealed.

Repealed by Laws, 1994, ch 564, § 101, eff from and after January 1, 1995.
§ 9-7-18. [Laws, 1989, ch. 378, § 1, eff from and after July 1, 1989].

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564.

Former § 9-7-18 was entitled: Creation of office of magistrate of the circuit court of the fourth circuit court district.

§ 9-7-19. Fifth district; composition.

The Fifth Circuit Court District is composed of the following counties:

(a) Attala County;
(b) Carroll County;
(c) Choctaw County;
(d) Grenada County;
(e) Montgomery County;
(f) Webster County; and
(g) Winston County.

HISTORY: Codes, 1930, § 473; 1942, § 1399; Laws, 1931, ch. 37; Laws, 1934, ch. 394; Laws, 1938, ch. 275; Laws, 1940, ch. 226; Laws, 1962, chs. 289, 290; Laws, 1966, ch. 338, § 1; Laws, 1968, ch. 328, § 1; Laws, 1973, ch. 364, § 1; Laws, 1976, ch. 397, § 2; Laws, 1978, ch. 324, § 2; Laws, 1979, ch. 385; Laws, 1983, ch. 499, § 4; Laws, 1985, ch. 502, § 27; Laws, 1994, ch. 564, § 47; Laws, 2015, ch. 476, § 38, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 47.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JUDICIAL DECISIONS

1. In general.

In a prosecution for murder defendant was properly arraigned in vacation, where the arraignment was publicly conducted in the place designated for holding court. Crossley v. State, 420 So. 2d 1376, 1982 Miss. LEXIS 2253 (Miss. 1982).

§ 9-7-20. Fifth district; number of judges.

(1) There shall be two (2) judges for the Fifth Circuit Court District.

(2) The two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Laws, 1978, ch. 324, § 1; Laws, 1985, ch. 502, § 49; Laws, 1994, ch. 564, § 48; Laws, 2005, ch. 501, § 11, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 39, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 48.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 11.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of

circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-21. Sixth district; composition; divisions; number and election of judges.

(1) The Sixth Circuit Court District is composed of the following counties:

(a) Adams County;

(b) Amite County;

(c) Franklin County; and

(d) Wilkinson County.

(2) The Sixth Circuit Court District shall be divided into two (2) subdistricts as follows:

(a) Subdistrict 6-1 shall consist of Wilkinson County and the following precincts in the following counties:

(i) Adams County: Airport, By-Pass Fire Station, Carpenter, Concord*, Courthouse*, Duncan Park*, Foster Mound, Maryland*, Northside School, Pine Ridge, Thompson and Washington*; and

(ii) Amite County: Ariel, Berwick, Crosby, East Centreville, East Gloster*, Gloster*, Homochitto, South Liberty* and Street.

(b) Subdistrict 6-2 shall consist of Franklin County and the following precincts in the following counties:

(i) Adams County: Beau Pre, Bellemont, Concord*, Convention Center, Courthouse*, Duncan Park*, Kingston, Liberty Park, Maryland*, Morgantown, Oakland, Palestine and Washington*; and

(ii) Amite County: Amite River, East Fork, East Gloster*, East Liberty, Gloster*, Liberty, New Zion, Oneil, Riceville, Smithdale, South Liberty*, Tangipahoa, Tickfaw, Walls and Zion Hills.

(3) There shall be two (2) judges for the Sixth Circuit Court District. The two (2) judgeships shall be separate and distinct. One (1) judge shall be elected from each subdistrict.

HISTORY: Codes, 1930, § 473; 1942, § 1400; Laws, 1931, ch. 37; Laws, 1942, ch. 310; Laws, 1958, ch. 253; Laws, 1979, ch. 424; Laws, 1983, ch. 499, § 5; Laws, 1984, ch. 413; Laws, 1985, ch. 502, § 28; Laws, 1994, ch. 564, § 49; Laws, 2015, ch. 476, § 40, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 49.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

Cross References — Administrative Office of Courts to assist court clerks, see § 9-21-3.

§ 9-7-23. Seventh district; composition; divisions.

(1) The Seventh Circuit Court District shall be Hinds County.

(2) The Seventh Circuit Court District shall be divided into four (4) subdistricts in Hinds County as follows:

(a) Subdistrict 7-1 shall consist of the following precincts in Hinds County: 1, 2, 4, 5, 6, 8, 9, 10, 32, 33, 34, 35, 36, 44, 45, 46, 47, 72, 73, 74, 75, 76, 77, 78, 79, 92, 93, 96 and 97.

(b) Subdistrict 7-2 shall consist of the following precincts in Hinds County: 11, 12, 13, 14, 15, 16, 17, 23, 27, 28, 29, 30 , 37, 38, 39, 40, 41, 42, 43, 80, 81, 82, 83, 84, 85, Brownsville, Cynthia, Pocahontas and Tinnin.

(c) Subdistrict 7-3 shall consist of the following precincts in Hinds County: 18, 19, 20, 21, 22, 24, 25, 26, 31, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 , 64, 66, 67, 68, 69, 70, 71, 86, 89, and Jackson State.

(d) Subdistrict 7-4 shall consist of the following precincts in Hinds County: 87, 88, 90 , 91, 94, 95, Bolton, Byram 1, Byram 2, Cayuga, Chapel Hill, Clinton 1, Clinton 2, Clinton 3, Clinton 4, Clinton 5, Clinton 6, Dry Grove, Edwards, Learned, Old Byram, Pinehaven, Raymond 1, Raymond 2, Spring Ridge, St. Thomas, Terry, Utica 1 and Utica 2.

HISTORY: Codes, 1930, § 473; 1942, § 1401; Laws, 1931, ch. 37; Laws, 1932, ch. 146; Laws, 1954, Ex. Sess. ch. 17, § 1; Laws, 1966, ch. 339, § 1; Laws, 1971, ch. 344, § 8; Laws, 1985, ch. 502, § 29; Laws, 1994, ch. 564, § 50; Laws, 2015, ch. 476, § 41, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 50.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth

Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

Cross References — Jurisdiction of circuit court of first judicial district of Hinds County over violations of Medicaid Fraud Control Act, see § 43-13-223.

§ 9-7-25. Seventh district; number and election of judges; powers and duties of judges.

(1) There shall be four (4) circuit judges for the Seventh Circuit Court District. One (1) judge shall be elected from each subdistrict.

(2) While there shall be no limitation whatsoever upon the powers and duties of the said judges other than as cast upon them by the Constitution and laws of this state, the court in the First Judicial District of Hinds County, in the discretion of the senior circuit judge, may be divided into civil and criminal divisions as a matter of convenience, by the entry of an order upon the minutes of the court.

HISTORY: Codes, 1942, § 1414.3; Laws, 1954 Ex. ch. 17, §§ 2-5 (¶¶ 1-4); Laws, 1964, ch. 319, §§ 1-4 (¶¶ 1-4); Laws, 1982, ch. 421; Laws, 1985, ch. 502, § 50; Laws, 1994, ch. 564, § 51, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 51.

Cross References — Jurisdiction of first judicial district of Hinds County to grant injunctive relief and appoint receivers in matters relating to legal expense insurance plans, see § 83-49-31.

§ 9-7-27. Eighth district; composition.

(1) The Eighth Circuit Court District is composed of the following counties:

(a) Leake County;
(b) Neshoba County;
(c) Newton County; and
(d) Scott County.

(2) There shall be two (2) judges for the Eighth Circuit Court District.

(3) The two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Codes, 1930, § 473; 1942, § 1402; Laws, 1931, ch. 37; Laws, 1934, ch. 183; Laws, 1936, ch. 228; Laws, 1938, ch. 276; Laws, 1942, ch. 311; Laws, 1954, ch. 244; Laws, 1962, ch. 291; Laws, 1966, ch. 340, § 1; Laws, 1971, ch. 344, § 9; Laws, 1973, ch. 356, § 1; Laws, 1974, ch. 319; Laws, 1983, ch. 499, § 6; Laws, 1985, ch. 502, § 30; Laws, 1994, ch. 564, § 52; Laws, 1997, ch. 378, § 1; Laws, 2015, ch. 476, § 42, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Section 52 of Chapter 564, Laws of 1994.

On October 21, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Section 1 of Chapter 378, Laws of 1997.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-29. Ninth district; composition; divisions.

(1) The Ninth Circuit Court District is composed of the following counties:

(a) Issaquena County;

(b) Sharkey County; and

(c) Warren County.

(2) The Ninth Circuit Court District shall be divided into two (2) subdistricts as follows:

(a) Subdistrict 9-1 shall consist of Issaquena County, Sharkey County and the following precincts in Warren County: 3-61 Store*, American Legion Hall, Auditorium, Brunswick, Cedar Grove*, Kings*, Number 7 Fire Station*, St. Aloysius and Vicksburg Junior High School*.

(b) Subdistrict 9-2 shall consist of the following precincts in Warren County: 3-61 Store*, Beechwood, Bovina, Cedar Grove*, Culkin, Elks Lodge, Goodrum, Jett, Kings*, Moose Lodge, Number 7 Fire Station*, Oak Ridge, Plumbers Hall, Redwood, Tingleville, Vicksburg Junior High School*, YMCA and Yokena.

HISTORY: Codes, 1930, § 473; 1942, § 1403; Laws, 1931, ch. 37; Laws, 1938, ch. 277; Laws, 1966, ch. 341, § 1; Laws, 1978, ch. 365, § 2; Laws, 1979, ch. 418; Laws, 1983, ch. 499, § 7; Laws, 1985, ch. 502, § 31; Laws, 1994, ch. 564, § 53; Laws, 2015, ch. 476, § 43, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 53.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh

Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

§ 9-7-30. Ninth district; number and election of judges.

There shall be two (2) judges for the Ninth Circuit Court District. One (1) judge shall be elected from each subdistrict.

HISTORY: Codes, 1978, ch. 365, § 1; Laws, 1985, ch. 502, § 51; Laws, 1994, ch. 564, § 54, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 54.

§ 9-7-31. Tenth district; composition.

The Tenth Circuit Court District is composed of the following counties:

(a) Clarke County;
(b) Kemper County;
(c) Lauderdale County; and
(d) Wayne County.

HISTORY: Codes, 1930, § 473; 1942, § 1404; Laws, 1931, ch. 37; Laws, 1934, ch. 184; Laws, 1950, ch. 354; Laws, 1962, ch. 292; Laws, 1964, ch. 313; Laws, 1972, ch. 344, § 1; Laws, 1978, ch. 360, § 3; Laws, 1983, ch. 499, § 8; Laws, 1985, ch. 502, § 32; Laws, 1994, ch. 564, § 55; Laws, 2015, ch. 476, § 44, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 55.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JUDICIAL DECISIONS

1. In general.

Where circuit court of Wayne County, by reason of the prevalence of an epidemic, adjourned the court from the first Monday until the third Monday of January, and thereafter while the court was in session extended the regular term, trial and conviction of defendant for possessing still during week of extended term was legal. Perry v. State, 154 Miss. 459, 122 So. 744, 1929 Miss. LEXIS 164 (Miss. 1929).

Chapter 130, Laws 1926, entitled an act to make the terms of the several circuit courts for the transaction of criminal business perpetual, is amended by this section as far as Lauderdale County is concerned (Chapter 140, Laws 1926), and one term of court fixed by law will terminate at the beginning of another term fixed by law. Walton v. State, 147 Miss. 851, 112 So. 790, 1927 Miss. LEXIS 311 (Miss. 1927).

An indictment found by a grand jury impaneled at a former term of court, where another term of court has intervened, is without authority to act, and an indictment found by such grand jury thereat is void; the grand jury ceases to be a legal body when a subsequent term of court begins. Walton v. State, 147 Miss. 851, 112 So. 790, 1927 Miss. LEXIS 311 (Miss. 1927).

§ 9-7-32. Tenth district; number of judges.

(1) There shall be two (2) judges for the Tenth Circuit Court District.

(2) The two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as “Place One” and “Place Two.”

HISTORY: Laws, 1978, ch. 360, § 1; Laws, 1985, ch. 502, § 52; Laws, 1994, ch. 564, § 56; Laws, 2005, ch. 501, § 12, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 45, eff from and after passage (approved Apr. 22, 2015).

Editor’s Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 56.

The preamble to Laws of 2005, ch. 501, reads as follows:

“WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

“WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,”

Laws of 2005, ch. 501, §§ 19 and 22 provide:

“SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

“SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.”

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 12.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

“WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

“WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,”

§ 9-7-33. Eleventh district; composition; divisions.

(1) The Eleventh Circuit Court District is composed of the following counties:

(a) Bolivar County;

(b) Coahoma County;

(c) Quitman County; and

(d) Tunica County.

(2) The Eleventh Circuit Court District shall be divided into three (3) subdistricts as follows:

(a) Subdistrict 11-1 shall consist of the following precincts from the following counties:

(i) Bolivar County: Benoit, Beulah, Boyle, Choctaw, Cleveland Courthouse, East Central Cleveland*, East Cleveland*, East Rosedale, Gunnison, Longshot, North Cleveland, Northwest Cleveland*, Pace, Scott, Shaw, Skene, South Cleveland*, Stringtown, West Central Cleveland, West Cleveland and West Rosedale; and

(ii) Coahoma County: Bobo, Clarksdale 2-4*, Clarksdale 5-4*, Farrell*, Rena Lara and Sherard*.

(b) Subdistrict 11-2 shall consist of the following precincts from the following counties:

(i) Bolivar County: Cleveland Eastgate, Duncan/Alligator, East Central Cleveland*, East Cleveland*, Merigold, Mound Bayou, Northwest Cleveland*, Renova, Shelby, South Cleveland* and Winstonville;

(ii) Coahoma County: Cagle Crossing, Clarksdale 1-4*, Clarksdale 3-3, Clarksdale 3-4, Clarksdale 4-2, Clarksdale 4-3, Dublin and Roundaway; and

(iii) Quitman County: Belen*, District 3 South*, Lambert, Northwest Marks, Southwest Marks and West Lambert.

(c) Subdistricts 11-3 shall consist of Tunica County and the following precincts in the following counties:

(i) Coahoma County: Clarksdale 1-4*, Clarksdale 2-4*, Clarksdale 5-4*, Coahoma, Farrell*, Friar's Point, Jonestown, Lula, Lyon and Sherard*; and

(ii) Quitman County: Belen*, Crenshaw, Crowder, Darling, District 3 North, District 3 South* and Sledge.

HISTORY: Codes, 1930, § 473; 1942, § 1405; Laws, 1931, ch. 37; Laws, 1940, ch. 227; Laws, 1942, ch. 315; Laws, 1950, ch. 334; Laws, 1952, ch. 233; Laws, 1956, ch. 225; Laws, 1964, ch. 748; Laws, 1968, ch. 310, § 1; Laws, 1973, ch. 392, § 1; Laws, 1983, ch. 499, § 9; Laws, 1985, ch. 502, § 33; Laws, 1994, ch. 564, § 57; Laws, 2015, ch. 476, § 46, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 57.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 62 provides:

"SECTION 62. The boundaries of the precincts described in Sections 9-5-17 (Fifth Chancery Court District), 9-5-31, (Ninth Chancery Court District), 9-5-37 (Eleventh Chancery District), 9-5-43 (Fourteenth Chancery Court District), 9-5-51 (Seventeenth Chancery Court District), 9-7-21 (Sixth Circuit Court District), 9-7-23 (Seventh Circuit Court District), 9-7-29 (Ninth Circuit Court District) and 9-7-33 (Eleventh Circuit Court District), Mississippi Code of 1972, shall be the boundaries of the precincts as those boundaries are contained in the Census Bureau's 2010 TIGER/Line Shapefiles released in November 2010. Partial or split precincts are identified by an asterisk (*)."

JUDICIAL DECISIONS

1. In general.

Where the judge of the circuit court of Bolivar County, Second District, on April 29, signed an order extending the term from May 2nd to May 9th, and on May 9th signed another order for a second extension to May 23rd but the minutes were not signed by the judge until the latter part of the second extended term, a judgment of conviction entered during the first extended term was invalid. Patton v. State, 194 Miss. 757, 12 So. 2d 383, 1943 Miss. LEXIS 67 (Miss. 1943).

Where circuit judge of Quitman County failed to sign any of minutes until after expiration of term, record did not legally show that any term of circuit court had been held requiring reversal of conviction which was had during such term. Williams v. State, 179 Miss. 419, 174 So. 581, 1937 Miss. LEXIS 23 (Miss. 1937).

§ 9-7-34. Eleventh district; number and election of judges.

There shall be three (3) judges for the Eleventh Circuit Court District. One (1) judge shall be elected from each subdistrict.

HISTORY: Laws, 1982, ch. 420; Laws, 1983, ch. 442, § 1; Laws, 1985, ch. 502, § 53; Laws, 1994, ch. 564, § 58, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 58.

§ 9-7-35. Twelfth district; composition.

(1) The Twelfth Circuit Court District is composed of the following counties:

(a) Forrest County; and
(b) Perry County.

(2) There shall be two (2) judges for the Twelfth Circuit Court District. The two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Codes, 1930, § 473; 1942, § 1406; Laws, 1931, ch. 37; Laws, 1954, ch. 254, § 5; Laws, 1956, chs. 226, 227; Laws, 1958, ch. 243; Laws, 1964, chs. 315, 316; Laws, 1983, ch. 499, § 10; Laws, 1985, ch. 502, § 34; Laws, 1994, ch. 564, § 59; Laws, 2015, ch. 476, § 47, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 59.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 64, provides:

"SECTION 64. Candidates for new chancellorships and circuit judgeships created by this act shall run for those offices in a special election to be conducted in conjunction with the general election of November 2015. Candidates shall file the intent to be a candidate not later than 5:00 p.m. on June 1, 2015, and otherwise shall qualify as provided by Section 23-15-977, and shall run for office and be elected as provided in Sections 23-15-974 through 23-15-985 (Nonpartisan Judicial Election Act). The judges elected shall serve a three-year term to begin January 1, 2016, and the terms of those offices shall thereafter be as is provided for chancellors and circuit judges generally."

§ 9-7-37. Thirteenth district; composition.

(1) The Thirteenth Circuit Court District is composed of the following counties:

(a) Covington County;
(b) Jasper County;
(c) Simpson County; and
(d) Smith County.

(2) There shall be two (2) judges for the Thirteenth Circuit Court District. The two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Codes, 1930, § 473; 1942, § 1407; Laws, 1931, ch. 37; Laws, 1934, ch. 185; Laws, 1962, ch. 293; Laws, 1983, ch. 499, § 11; Laws, 1985, ch. 502, § 35; Laws, 1994, ch. 564, § 60; Laws, 2015, ch. 476, § 48, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 60.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 64, provides:

"SECTION 64. Candidates for new chancellorships and circuit judgeships created by this act shall run for those offices in a special election to be conducted in conjunction with the general election of November 2015. Candidates shall file the intent to be a candidate not later than 5:00 p.m. on June 1, 2015, and otherwise shall qualify as provided by Section 23-15-977, and shall run for office and be elected as provided in Sections 23-15-974 through 23-15-985 (Nonpartisan Judicial Election Act). The judges elected shall serve a three-year term to begin January 1, 2016, and the terms of those offices shall thereafter be as is provided for chancellors and circuit judges generally."

§ 9-7-39. Fourteenth district; composition; number of judges.

(1) The Fourteenth Circuit Court District is composed of the following counties:

(a) Lincoln County;
(b) Pike County; and
(c) Walthall County.

(2)(a) There shall be two (2) judges for the Fourteenth Circuit Court District.

(b) The two (2) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One" and "Place Two."

HISTORY: Codes, 1930, § 473; 1942, § 1408; Laws, 1931, ch. 37; Laws, 1940, ch. 225; Laws, 1971, ch. 459; Laws, 1973, ch. 360, § 1; Laws, 1983, ch. 499, § 12; Laws, 1985, ch. 502, § 36; Laws, 1994, ch. 564, § 61; Laws, 2005, ch. 501, § 13, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 49, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 61.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 13.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015,

provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JUDICIAL DECISIONS

1. In general.

Statute (Chapter 225 Laws of 1940) amending sections dealing with terms of court in Lincoln County by setting out the sections thereof intended to be amended, was not invalid for failure to bring forward the whole of the chapter in which such section was contained. Fugler v. State, 192 Miss. 775, 7 So. 2d 873, 1942 Miss. LEXIS 72 (Miss. 1942).

§ 9-7-41. Fifteenth district; composition.

The Fifteenth Circuit Court District is composed of the following counties:

(a) Jefferson Davis County;
(b) Lamar County;
(c) Lawrence County;
(d) Marion County; and
(e) Pearl River County.

HISTORY: Codes, 1930, § 473; 1942, § 1409; Laws, 1931, ch. 37; Laws, 1932, ch. 149; Laws, 1950, ch. 335; Laws, 1952, ch. 234; Laws, 1958, ch. 286; Laws, 1960, ch. 231; Laws, 1964, ch. 317; Laws, 1970, ch. 330, § 1; Laws, 1974, ch. 322; Laws, 1975, ch. 479; Laws, 1976, ch. 336; Laws, 1977, ch. 319; Laws, 1979, ch. 308; Laws, 1981, ch. 493, § 1; Laws, 1982, chs. 417, § 1; 461; Laws, 1983, ch. 499, § 13; Laws, 1985, ch. 502, § 37; Laws, 1994, ch. 564, § 62; Laws, 2015, ch. 476, § 50, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 62.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-42. Fifteenth district; number of judges.

(1) There shall be three (3) judges for the Fifteenth Circuit Court District.

(2) The three (3) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two," and "Place Three." The judge to fill Place One must be a resident of Jefferson Davis, Lamar, Lawrence or Marion County. The judge to fill Place

Two may be a resident of any county in the district. The judge to fill Place Three must be a resident of Pearl River County.

HISTORY: Laws, 1982, ch. 417, § 2; Laws, 1985, ch. 502, § 54; Laws, 1994, ch. 564, § 63; Laws, 2005, ch. 501, § 14, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 51, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 63.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2005, ch. 501, § 14.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 64, provides:

"SECTION 64. Candidates for new chancellorships and circuit judgeships created by this act shall run for those offices in a special election to be conducted in conjunction with the general election of November 2015. Candidates shall file the intent to be a candidate not later than 5:00 p.m. on June 1, 2015, and otherwise shall qualify as provided by Section 23-15-977, and shall run for office and be elected as provided in Sections 23-15-974 through 23-15-985 (Nonpartisan Judicial Election Act). The judges elected shall serve a three-year term to begin January 1, 2016, and the terms of those offices shall thereafter be as is provided for chancellors and circuit judges generally."

Cross References — Court terms for fifteenth district, see § 9-7-41.

§ 9-7-43. Sixteenth district; composition.

The Sixteenth Circuit Court District is composed of the following counties:

(a) Clay County;
(b) Lowndes County;
(c) Noxubee County; and
(d) Oktibbeha County.

HISTORY: Codes, 1930, § 473; 1942, § 1410; Laws, 1931, ch. 37; Laws, 1934, ch. 186; Laws, 1936, ch. 229; Laws, 1942, ch. 308; Laws, 1950, ch. 361; Laws, 1955, Ex. ch. 37; Laws, 1958, chs. 270, 278; Laws, 1960, ch. 232; Laws, 1962, ch. 294, §§ 1-5; Laws, 1966, ch. 343, § 1; Laws, 1971, ch. 303, § 1; Laws, 1978, ch. 360, § 4; Laws, 1978, ch. 482, § 1; Laws, 1980, ch. 351; Laws, 1983, ch. 499, § 14; Laws, 1983, 1st Ex Sess ch. 5; Laws, 1984, ch. 360, § 1; Laws, 1985, ch. 502, § 38; Laws, 1994, ch. 564, § 64; Laws, 2015, ch. 476, § 52, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 64.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JUDICIAL DECISIONS

1. In general.

Circuit Court of Kemper County had jurisdiction of murder prosecution, where, before expiration of term, order was entered extending term for two weeks, grand jury was recalled after beginning of extended portion of term, returned indictment, and case was tried during extended portion of term, since extension order did not limit court's power during extended portion of term to dealing with such matters only as were before court when order was entered. Brown v. State, 173 Miss. 563, 161 So. 465 (Miss. 1935), rev'd, 297 U.S. 278, 56 S. Ct. 461, 80 L. Ed. 682, 1936 U.S. LEXIS 527 (U.S. 1936).

§ 9-7-44. Sixteenth district; number of judges.

(1) There shall be three (3) judges for the Sixteenth Circuit Court District.

(2) The three (3) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three." The judge to fill Place One must be a resident of Lowndes County. The judge to fill Place Two must be a resident of Oktibbeha County. The judge to fill Place Three must be a resident of either Clay or Noxubee County. Election of the three (3) offices of judge shall be by election to be held in every county within the Sixteenth Circuit Court District.

HISTORY: Laws, 1975, ch. 344; Laws, 1994, ch. 564, § 65; Laws, 2005, ch. 501, § 15, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 53, eff from and after passage (approved Apr. 22, 2015).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory language of the second tier of the section. The word "Effective " was changed to "From." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the

amendment of this section by Laws of 1994, ch. 564, § 65.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 15.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-45. Seventeenth district; composition; divisions.

The Seventeenth Circuit Court District shall be divided into two (2) subdistricts as follows:

(a) Subdistrict 17-1 shall be composed of DeSoto County; and

(b) Subdistrict 17-2 shall be composed of Panola County, Tallahatchie County, Tate County and Yalobusha County.

HISTORY: Codes, 1930, § 473; 1942, § 1411; Laws, 1932, ch. 147; Laws, 1968, ch. 329, § 1; Laws, 1970, ch. 331, § 1; Laws, 1983, ch. 499, § 15; Laws, 1985, ch. 502, § 39; Laws, 1994, ch. 564, § 66; Laws, 2015, ch. 476, § 54, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 66.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-46. Seventeenth district; number and election of judges.

(1) There shall be four (4) circuit judges for the Seventeenth Circuit Court District.

(2) For the purpose of appointment and election, the four (4)judge ships shall be separate and distinct, and one (1) judge shall be elected from Subdistrict 17-1, two (2) judges shall be elected from Subdistrict 17-2, and one (1) judge shall be elected from every county in the district. The two (2) judgeships in Subdistrict 17-2 shall be denominated as "Place One" and "Place Two," the judgeship in Subdistrict 17-1 shall be denominated as "Place Three," and the at-large judgeship shall be denominated as "Place Four."

HISTORY: Laws, 1982, ch. 413; Laws, 1985, ch. 502, § 55; Laws, 1994, ch 564, § 67; Laws, 2005, ch. 501, § 16, eff Jan. 1, 2007.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory language of the second tier of the section. The word "Effective" was changed to "From.." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 67.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 16.

§ 9-7-47. Eighteenth district; composition.

The Eighteenth Circuit Court District shall be Jones County.

HISTORY: Codes, 1942, § 1411.5; Laws, 1954, ch. 254, §§ 2-4, 7; Laws, 1962, ch. 295; Laws, 1983, ch. 499, § 16; Laws, 1985, ch. 502, § 40; Laws, 1994, ch. 564, § 68, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the source line of this section. The words “ch. 254” were substituted for “ch. 250” following “Laws, 1954.”

Editor’s Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 68.

Cross References — Extension into term of court in other county of same district, see § 9-1-5.

§ 9-7-49. Nineteenth district; composition; local contributions for support of court.

(1) The Nineteenth Circuit Court District is composed of the following counties:

(a) George County;
(b) Greene County; and
(c) Jackson County.

(2) The local contribution required for the maintenance of the Nineteenth Circuit Court District shall not exceed, as to George and Greene Counties, the amount of their present local contribution in their present respective circuit court districts, and any excess shall be paid by Jackson County.

HISTORY: Codes, 1942, § 1411.7; Laws, 1962, ch. 296, §§ 1-8; Laws, 1964, ch. 318, §§ 1, 2, 4 (¶¶ 2, 4, 7); Laws, 1970, ch. 332, § 1; Laws, 1971, ch. 329, § 1; Laws, 1974, ch. 305; Laws, 1979, ch. 377; Laws, 1983, ch. 499, § 17; Laws, 1985, ch. 502, § 41; Laws, 1994, ch. 564, § 69; Laws, 2015, ch. 476, § 55, eff from and after passage (approved Apr. 22, 2015).

Editor’s Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 69.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

“WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

“WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,”

Cross References — Extension into term of court in other county of same district, see § 9-1-5.

JUDICIAL DECISIONS

1. In general.

The authority for an order taking a matter under consideration for a decision in vacation ended with the commencement of an intervening term of the circuit court and a final judgment which was entered, in vacation, subsequent to that date was null and void. Alabama G. S. R. Co. v. Jarrell, 360 So. 2d 682, 1978 Miss. LEXIS 2297 (Miss. 1978).

Since this section [Code 1972, § 9-7-49] gives the court the authority to try criminal cases during the same week that civil cases are set for trial, it was not reversible error for the court to set civil cases during the week criminal cases were to be tried; if there are not enough civil cases to keep the court busy, criminal cases may be set for trial, so long as the civil cases are given precedence over the criminal cases.

Bright v. State, 293 So. 2d 818, 1974 Miss. LEXIS 1814 (Miss. 1974).

§ 9-7-51. Nineteenth district; number and election of judges; divisions.

(1) There shall be three (3) judges for the Nineteenth Circuit Court District. The three (3) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three."

(2) The senior judge of the Nineteenth Circuit Court District may divide the court of any county within the district into civil, criminal and appellate court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

HISTORY: Codes, 1942, § 1411.8; Laws, 1970, ch. 333, §§ 1-5; Laws, 1978, ch. 379, § 1; Laws, 1985, ch. 502, § 56; Laws, 1994, ch. 564, § 70; Laws, 2015, ch. 476, § 56, eff from and after passage (approved Apr. 22, 2015).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section. The paragraph designation "(a)" was deleted from the first line, and the subsection designation "(2)" was substituted for the paragraph designation "(b)" on the fifth line. (The section had contained a (1)(a) and (b), but no (2).) The Joint Committee ratified the correction at its April 28, 1999 meeting.

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 70.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-53. Twentieth district; composition.

The Twentieth Circuit Court District is composed of the following counties:

(a) Madison County; and

(b) Rankin County.

HISTORY: Codes, 1942, § 1411.9; Laws, 1971, ch. 344; Laws, 1976, ch. 397, § 1; Laws, 1978, ch. 344, § 1; Laws, 1982, ch. 481, § 1; Laws, 1983, ch. 305, ch. 499, § 18; Laws, 1984, ch. 360, § 2; Laws, 1985, ch. 502, § 42; Laws, 1994, ch. 564, § 71; Laws, 2015, ch. 476, § 57, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 71.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015,

provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-54. Twentieth district; number of judges.

(1) There shall be three (3) judges for the Twentieth Circuit Court District.

(2) The three (3) judgeships shall be separate and distinct and denominated for purposes of appointment and election only as "Place One," "Place Two" and "Place Three." The judge to fill Place One must reside in Rankin County, the judge to fill Place Two must reside in Madison County, and the judge to fill Place Three may reside in either Madison or Rankin County.

HISTORY: Laws, 1982, ch. 481, § 2; Laws, 1985, ch. 502, § 57; Laws, 1994, ch. 564, § 72; Laws, 2005, ch. 501, § 17, eff Jan. 1, 2007; Laws, 2015, ch. 476, § 58, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 72.

The preamble to Laws of 2005, ch. 501, reads as follows:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit court districts and chancery court districts; and

"WHEREAS, the Legislature has thoroughly investigated the state of the trial courts and trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW THEREFORE,"

Laws of 2005, ch. 501, §§ 19 and 22 provide:

"SECTION 19. The candidates for any new judgeships or chancellorships created under Laws 2005, Chapter 501, shall be entitled to run for those offices in the judicial election prior to the commencement of the initial term of the new judgeship or chancellorship.

"SECTION 22. This act shall take effect and be in force from and after January 1, 2007, provided it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 501, § 17.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

Laws of 2015, ch. 476, § 64, provides:

"SECTION 64. Candidates for new chancellorships and circuit judgeships created by this act shall run for those offices in a special election to be conducted in conjunction with the general election of November 2015. Candidates shall file the intent to be a candidate not later than 5:00 p.m. on June 1, 2015, and otherwise shall qualify as provided by Section 23-15-977, and shall run for office and be elected as provided in Sections 23-15-974 through 23-15-985 (Nonpartisan Judicial Election Act). The judges elected shall serve a three-year term to begin January 1, 2016, and the terms of those offices shall thereafter be as is provided for chancellors and circuit judges generally."

§ 9-7-55. Twenty-first district; composition.

The Twenty-first Circuit Court District is composed of the following counties:

(a) Holmes County;
(b) Humphreys County; and
(c) Yazoo County.

HISTORY: Laws, 1994, ch 564, § 73; Laws, 2015, ch. 476, § 59, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 564, § 73.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

§ 9-7-57. Twenty-second district; composition.

The Twenty-second Circuit Court District is composed of the following counties:

(a) Claiborne County;
(b) Copiah County; and
(c) Jefferson County.

HISTORY: Laws, 1994, ch 564, § 74; Laws, 2015, ch. 476, § 60, eff from and after passage (approved Apr. 22, 2015).

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 74.

The preamble to Chapter 476, Laws of 2015, effective from and after April 22, 2015, provides:

"WHEREAS, it is the responsibility of the Legislature under Section 152 of the Mississippi Constitution of 1890 to divide the state into an appropriate number of circuit and chancery court districts; and

"WHEREAS, the Legislature has investigated the state of the trial courts and the trial court districts and has considered the needs of the state according to all the criteria imposed by the Constitution and by general law; NOW, THEREFORE,"

JURISDICTION, POWERS AND AUTHORITY

Sec.	
9-7-81.	Jurisdiction; general enumeration of subjects.
9-7-83.	Jurisdiction of cases transferred or remanded to it.
9-7-85.	Jurisdiction; suit for sum below.
9-7-87.	Special terms; jurisdiction; juries for.
9-7-89.	Motions against officers for money collected.
9-7-91.	Judgments and executions.
9-7-93.	Time may be allotted by court for civil and criminal business separately.
9-7-95.	Transfer for trial of cases filed in county courts in nineteenth district.

§ 9-7-81. Jurisdiction; general enumeration of subjects.

The circuit court shall have original jurisdiction in all actions when the principal of the amount in controversy exceeds two hundred dollars, and of all other actions and causes, matters and things arising under the constitution and laws of this state which are not exclusively cognizable in some other court, and such appellate jurisdiction as prescribed by law. Such court shall have power to hear and determine all prosecutions in the name of the state for treason, felonies, crimes, and misdemeanors, except such as may be exclusively cognizable before some other court; and said court shall have all the powers belonging to a court of oyer and terminer and general jail delivery, and may do and perform all other acts properly pertaining to a circuit court of law.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 6 (5); 1857, ch. 61, art. 29; 1871, § 519; 1880, § 1493; 1892, § 645; 1906, § 702; Hemingway's 1917, § 481; 1930, § 490; 1942, § 1428.

Cross References — Jurisdiction of Supreme Court, see § 9-3-9.

Jurisdiction of chancery court in general, see § 9-5-81.

Jurisdiction of county court, see § 9-9-21.

Civil practice and procedure provisions common to courts, see § 11-1-1 et seq.

Prohibition against reversal of judgment or decree in civil case for want of jurisdiction to render, see § 11-3-9.

Civil practice and procedure in circuit courts, see §§ 11-7-1 et seq.

Venue of civil actions generally, see §§ 11-11-1 et seq.

Jurisdiction of circuit courts over arbitration proceedings based on controversies arising out of construction contracts and related agreements, see § 11-15-129.

Trial of right of property, see § 11-23-1 et seq.

Jurisdiction and powers of circuit court in eminent domain proceedings, see § 11-27-3.

Attachment at law against debtors, see §§ 11-33-1 et seq.

Garnishment proceedings, see §§ 11-35-1 et seq.

Action of replevin, see §§ 11-37-1 et seq.

Quo warranto proceedings, see §§ 11-39-1 et seq.

Mandamus and writs of prohibition, see §§ 11-41-1 et seq.

Habeas corpus proceedings, see §§ 11-43-1 et seq.

Suits by and against state or its political subdivisions, see §§ 11-45-1 et seq.

Appeals from denial of applications to register as an elector, see §§ 23-15-61 through 23-15-79.

Determination of primary election contests by a circuit judge or chancellor, see

§§ 23-15-929 through 23-15-941.

Determination of election contests in circuit court, see §§ 23-15-951 and 23-15-953.

Jurisdiction of circuit courts over appeals from determinations relative to provisions requiring disclosure of campaign finances, see § 23-15-813.

Judicial review of final decisions of employee appeals board, see § 25-9-132.

Appeals from decisions under animal by-products disposal law of 1964, see § 41-51-29.

Jurisdiction of circuit courts over violations of Medicaid Fraud Control Act, see § 43-13-223.

Provision that a person aggrieved by an order issued pursuant to the Mississippi Catfish Processor Fair Practices Act may seek judicial review in the Hinds County Circuit Court, First Judicial District, see § 69-7-667.

Provisions relative to jurisdiction of the Circuit Court of the First Judicial Circuit of Hinds County to hear employers' appeals regarding rates of contributions to the Unemployment Compensation Fund, see § 71-5-355.

For circuit court's jurisdiction in paternity cases, see § 93-9-15.

Racketeer Influenced and Corrupt Organization Act, see §§ 97-43-1 et seq.

Criminal procedure generally, see § 99-1-1 et seq.

County in which motions may be made or a guilty plea entered with respect to criminal cases in circuit courts, see § 99-15-24.

Appeals to circuit court in criminal cases, see §§ 99-35-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Jurisdiction in general.
2. Original jurisdiction.
3. Amount in controversy.
4. Criminal jurisdiction.
5. Appellate jurisdiction.

1. Jurisdiction in general.

Mississippi justice courts and the circuit courts shared concurrent jurisdiction in matters in which the amount in controversy exceeded $200 but not $2,500. Arant v. Hubbard, 824 So. 2d 611, 2002 Miss. LEXIS 257 (Miss. 2002).

Mississippi Constitution Article 4 § 38 vests competence of a candidate's qualifications for office-including whether the candidate meets residency qualifications-in the Senate. Thus, the circuit court did not have subject matter jurisdiction of an election contest wherein it was alleged that candidates did not meet the residency requirements for service in the Senate as prescribed in Article 4 § 42 of the Mississippi Constitution. Foster v. Harden, 536 So. 2d 905, 1988 Miss. LEXIS 639 (Miss. 1988), overruled in part, Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Circuit court had jurisdiction to decide suit challenging powers being exercised by Lieutenant Governor where there was no exclusive vesting in another court of jurisdiction to hear and decide such claim, and due to nature of relief sought, i.e., that Lieutenant Governor's exercise of certain powers in Senate be declared unconstitutional and he be debarred from exercising such authority, such case was akin to those historically within circuit court jurisdiction, to-wit: quo warranto proceedings. Dye v. State, 507 So. 2d 332, 1987 Miss. LEXIS 2507 (Miss. 1987).

While subject matter jurisdiction lay within either the circuit or the chancery court, the circuit court had subject matter jurisdiction of heavy equipment vendor's action against a county board of supervisors where the amended complaint, although it sought some relief equitable in nature, in substantial part partook of an action at law, in that it charged the board of supervisors with breach of duties not unlike those generally contractual, and the complaint sought the assessment of civil penalties. Canton Farm Equipment, Inc. v. Richardson, 501 So. 2d 1098, 1987 Miss. LEXIS 2273 (Miss. 1987).

Provision in church manual permitting bishops to retain ten per cent of all monies raised by them in their respective dioceses does not give to ousted bishop such property rights in monies raised by his successor in office as to entitle him to invoke the jurisdiction of the civil courts to recover the ten per cent claimed by him. Conic v. Cobbins, 208 Miss. 203, 44 So. 2d 52, 1950 Miss. LEXIS 240 (Miss. 1950).

Unless some property rights are involved, civil courts have no jurisdiction over ecclesiastical controversies and are without jurisdiction to decide who is, or who ought to be, presiding bishop of the diocese. Conic v. Cobbins, 208 Miss. 203, 44 So. 2d 52, 1950 Miss. LEXIS 240 (Miss. 1950).

Under Code 1942, § 3778, providing for the recall of municipal officers and providing that on refusal of the board to call an election a petition may be presented to the governor who shall at once order an election according to the terms thereof, the power to call an election rests exclusively with the governor, hence the circuit court was held to be without power to call such an election. Coleman v. Lucas, 206 Miss. 274, 39 So. 2d 879, 1949 Miss. LEXIS 260 (Miss. 1949).

Circuit court and chancery court to which suit was transferred were courts of competent jurisdiction to adjudicate litigation against Federal Housing Authority under Contract Settlement Act of 1944, 41 USCA, §§ 101 et seq., and Government Corporation Control Act of 1945, 31 USCA, § 846; and Federal Public Housing Authority is suable in Mississippi courts. Walsh Const. Co. v. Davis, 204 Miss. 509, 37 So. 2d 757, 1948 Miss. LEXIS 385 (Miss. 1948).

As the necessary effect of Const. 1890 § 147, we have practically a complete blending of law and equity and only maintain courts to administer them. Goyer Cold-Storage Co. v. Wildberger, 71 Miss. 438, 15 So. 235, 1893 Miss. LEXIS 92 (Miss. 1893).

Where jurisdiction is given to a court by the constitution, it cannot be conferred exclusively on any other court by the legislature. Montross v. State, 61 Miss. 429, 1883 Miss. LEXIS 154 (Miss. 1883).

The circuit court has jurisdiction where there is no other legal remedy. Madison County Court v. Alexander, 1 Miss. 523, 1832 Miss. LEXIS 13 (Miss. 1832); Planters' Ins. Co. v. Cramer, 47 Miss. 200, 1872 Miss. LEXIS 62 (Miss. 1872), overruled, State v. Maples, 402 So. 2d 350, 1981 Miss. LEXIS 2151 (Miss. 1981), but see De La Beckwith v. State, 615 So. 2d 1134, 1992 Miss. LEXIS 807 (Miss. 1992), cert. denied, 510 U.S. 884, 114 S. Ct. 232, 126 L. Ed. 2d 187, 1993 U.S. LEXIS 5961 (U.S. 1993).

2. Original jurisdiction.

Dismissal of the insured's action against her insurer in Mississippi for bad faith was improper where there was no personal or subject matter jurisdiction over the insurer, Miss. Const. art. 6, § 156, Miss Code Ann. § 9-7-81; none of the parties were Mississippi residents, none of the actions creating the dispute occurred in Mississippi, and Mississippi law would not have governed the litigation. Hogrobrooks v. Progressive Direct, 858 So. 2d 913, 2003 Miss. App. LEXIS 1029 (Miss. Ct. App. 2003).

Where the non-movant's complaint alleged seven counts at law and one equitable count seeking an accounting, the chancery court erred in refusing to transfer the case to the circuit court; the non-movant failed to allege a true claim for an accounting, as the non-movant sought an accounting of the non-movant rather than an accounting of the movants, and, therefore, the circuit court had jurisdiction pursuant to Miss. Const. art. VI, § 156 and Miss. Code Ann. § 9-7-81. Briggs & Stratton Corp. v. Smith, 854 So. 2d 1045, 2003 Miss. LEXIS 471 (Miss. 2003).

The circuit court, rather than the chancery court, had jurisdiction over a tort action for intentional infliction of emotional distress. Little v. Collier, 759 So. 2d 454, 2000 Miss. App. LEXIS 103 (Miss. Ct. App. 2000).

A chancery clerk was entitled to bring an original action in the circuit court, in the nature of quo warranto, under §§ 11-39-1 and 11-39-5 as supplanted by the rules of civil procedure, for reinstatement by the county board of supervisors to the posts of clerk of the board of supervisors and county auditor. Barlow v. Weathersby, 597 So. 2d 1288, 1992 Miss. LEXIS 196 (Miss. 1992).

An action by an insured to recover medical expenses incurred by his wife, even though predicated on the theory of specific performance, was nothing more than a suit for a breach of contract and, pursuant to this section, should have been brought in the circuit court rather than the chancery court. Dixie Nat'l Life Ins. Co. v. Allison, 372 So. 2d 1081, 1979 Miss. LEXIS 2151 (Miss. 1979).

The circuit courts of this state have original jurisdiction of suits filed therein for damages based upon actions ex contractu and ex delicto, and the inherent power to correct judgments obtained in the circuit court through fraud, accident or mistake. City of Starkville v. Thompson, 243 So. 2d 54, 1971 Miss. LEXIS 1500 (Miss. 1971).

Original jurisdiction to make conclusive and final adjudication of title to land rests alone with circuit and chancery courts, and to a limited extent with the county courts. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

The framers of the constitution evidently intended by all "matters civil" in § 156, Const. 1890, vesting in the circuit court original jurisdiction, to mean matters of common law cognizance. Illinois C. R. Co. v. Le Blanc, 74 Miss. 650, 21 So. 760, 1897 Miss. LEXIS 57 (Miss. 1897).

The court has jurisdiction generally of an action of ejectment and is not deprived thereof by Const. 1890 § 160. Illinois C. R. Co. v. Le Blanc, 74 Miss. 650, 21 So. 760, 1897 Miss. LEXIS 57 (Miss. 1897).

Constitution § 160 reversed the former relation of the courts, in which the circuit court possessed general jurisdiction and was the repository of the power to administer legal remedies, and the chancery court had jurisdiction of certain designated matters and where there was not a full, adequate and complete remedy at law. Now, by Const. § 156, the circuit court has original jurisdiction "in all matters, civil and criminal, in this state not vested by this constitution in some other court." Whitney v. Hanover Nat'l Bank, 71 Miss. 1009, 15 So. 33, 1894 Miss. LEXIS 4 (Miss. 1894).

A claimant's issue is not an original suit. Bernheimer v. Martin, 66 Miss. 486, 6 So. 326, 1889 Miss. LEXIS 133 (Miss. 1889).

The original jurisdiction of the circuit court can be made, by statute, to embrace contested election cases. Hall v. Lyon, 59 Miss. 218, 1881 Miss. LEXIS 107 (Miss. 1881).

Garnishment is not an original suit, and the circuit court may issue and render judgment thereon for amounts within the justices' jurisdiction. Martin v. Harvey, 54 Miss. 685, 1877 Miss. LEXIS 81 (Miss. 1877).

3. Amount in controversy.

Actual damage for $190.00 and $25.00 statutory damage may be combined in a suit giving the circuit court jurisdiction. Mobile & O. R. Co. v. Greenwald & Champenois, 104 Miss. 417, 61 So. 426, 1913 Miss. LEXIS 43 (Miss. 1913).

The circuit court may lose jurisdiction where after suit is brought against two joint defendants a compromise with one reduces the amount sued for below $200.00. Mobile, J. & K. C. R. Co. v. Hitt & Rutherford, 99 Miss. 679, 55 So. 484, 1911 Miss. LEXIS 237 (Miss. 1911).

The value of the property replevied determines jurisdiction as to amount. Brumfield v. Hoover, 90 Miss. 502, 43 So. 951, 1907 Miss. LEXIS 97 (Miss. 1907).

If the amount of a judgment of a justice of the peace in another state, together with the costs of suit paid by the plaintiffs, exceed $200.00, the circuit court has jurisdiction of the suit for the aggregate amount. McDougle v. Fulmer, 82 Miss. 200, 34 So. 152, 1903 Miss. LEXIS 144 (Miss. 1903).

Jurisdiction as to the amount in controversy is to be determined by the whole amount claimed by the plaintiff, and not by what is left to be contended for after the exclusion by the court of special damages. Jacobs v. Postal Telegraph-Cable Co., 76 Miss. 278, 24 So. 535, 1898 Miss. LEXIS 91 (Miss. 1898).

If the record shows less than the jurisdictional amount and does not show that case originated in a justice's court, judgment will be reversed and proceedings dismissed for want of jurisdiction. Andrews v. Wallace, 72 Miss. 291, 16 So. 204, 1894 Miss. LEXIS 64 (Miss. 1894).

The pleadings, where honest, fix and determine the amount in controversy.

Fenn v. Harrington, 54 Miss. 733, 1877 Miss. LEXIS 91 (Miss. 1877).

The principal of the amount in controversy at the time the suit is brought, after deducting credits, if any, is the test of jurisdiction. Martin v. Harden, 52 Miss. 694, 1876 Miss. LEXIS 276 (Miss. 1876).

4. Criminal jurisdiction.

A proper reading of Article III § 27 of the Mississippi Constitution initially requires an indictment that charges the essential elements of the criminal offense. Once the indictment has been served on the defendant, a court having subject matter jurisdiction is empowered to proceed. A subsequent event such as a guilty plea to a lesser related offense in no way ousts the court of personal jurisdiction. This reading is consistent with the purposes which an indictment serves-the reasons it has been accorded the status of a constitutional right-(1) to furnish the accused with such a description of the charge against him or her as will enable the accused to make his or her defense and avail himself or herself of a conviction or acquittal for protection against a further prosecution for the same cause, (2) to inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction if one should be obtained, and (3) to guard against malicious, groundless prosecution. Jefferson v. State, 556 So. 2d 1016, 1989 Miss. LEXIS 485 (Miss. 1989).

When a juvenile is charged with an offense carrying a potential life sentence, such as rape or murder, jurisdiction is vested exclusively in the circuit court and the Youth Court Act is inapplicable. Smith v. State, 534 So. 2d 194, 1988 Miss. LEXIS 545 (Miss. 1988).

Murder is a crime excepted from the jurisdiction of the youth court. Thus, the circuit court had exclusive jurisdiction over a juvenile charged with murder. Boyd v. State, 523 So. 2d 1037, 1988 Miss. LEXIS 220 (Miss. 1988).

Circuit courts have all the common-law power of English criminal courts to examine, try and deliver every prisoner who is in jail or under charge within the jurisdiction of the court. State v. Thornhill, 251 Miss. 718, 171 So. 2d 308, 1965 Miss. LEXIS 896 (Miss. 1965).

One of two courts of concurrent jurisdiction may, by valid order of dismissal, relinquish its exclusive jurisdiction acquired by criminal prosecution being first instituted therein, so that the other court may proceed then with prosecution of same offense. Hegwood v. State, 206 Miss. 160, 39 So. 2d 865, 1949 Miss. LEXIS 250 (Miss. 1949).

Dismissal without prejudice to the state of proceeding against defendant in justice of the peace court for unlawful possession of intoxicating liquor on motion of state did not prevent the defendant from being indicted for the same offense in the circuit court having concurrent jurisdiction. Hegwood v. State, 206 Miss. 160, 39 So. 2d 865, 1949 Miss. LEXIS 250 (Miss. 1949).

A justice of the peace is not authorized to bind over a defendant charged with a misdemeanor unless proof shows he is guilty of a felony. The circuit court cannot take original jurisdiction to try a misdemeanor on the affidavit before the justice of the peace. Young v. State, 140 Miss. 165, 105 So. 461, 1925 Miss. LEXIS 245 (Miss. 1925).

The circuit court has original jurisdiction to try only cases on indictment presented by the grand jury. Young v. State, 140 Miss. 165, 105 So. 461, 1925 Miss. LEXIS 245 (Miss. 1925).

5. Appellate jurisdiction.

Circuit court lost jurisdiction over an employee's action where judicial review was sought of a decision by the Mississippi Workers' Compensation Commission that denied her claim for workers' compensation benefits when the employee failed to file a timely appeal from the same court's order affirming the Commission's decision; the circuit court erred in vacating its own order and replacing it with a new and contrary order. Univ. of S. Miss. v. Gillis, 872 So. 2d 60, 2003 Miss. App. LEXIS 1193 (Miss. Ct. App. 2003), cert. denied, 873 So. 2d 1032, 2004 Miss. LEXIS 479 (Miss. 2004).

Nothing in § 9-7-81 places temporal limits upon the Circuit Court's exercise of its appellate jurisdiction, and, thus, the expiration of the term of the Circuit Court had no effect on its power as an appellate court to grant a motion to reconsider the decision of a city civil service commission to uphold a police lieutenant's discharge. City of Gulfport v. Saxton, 437 So. 2d 1215, 1983 Miss. LEXIS 2925 (Miss. 1983).

While it is still mandatory that the justice of the peace or the mayor or police justice, in appeals from their courts, transmit to the proper clerk a certified copy of the record of the proceedings with the original papers, process and appeal bond, if no objection is made to the transcript before or during the trial of the case, on its merits, it will be conclusively presumed that the transcript was before the court and complied in every respect with the law. Whittington v. State, 218 Miss. 631, 67 So. 2d 515, 1953 Miss. LEXIS 581 (Miss. 1953).

Supreme Court, circuit courts, chancery courts and county courts, when acting on appeal from a special possessory court of a justice or justices of peace, have only such jurisdiction to adjudicate regarding title to land as is vested in special court from which appeal was taken. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Neither justice of the peace, nor circuit court on appeal, in proceeding under Code 1942, § 948, have any jurisdiction to make final and conclusive adjudication of title to property involved. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Circuit court has jurisdiction of both subject-matter and parties on appeal with supersedeas from default judgment by justice of peace in summary proceeding under § 948, Code of 1942, to obtain possession of real property rendered on invalid service of process, although justice had jurisdiction only of subject-matter when default judgment was rendered. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Where plaintiff brought an action for $105 in justice court to which defendant interposed plea of setoff for the first time on appeal in the circuit court for a sum less than $200, the circuit court nevertheless had jurisdiction to pass on the question of whether such plea could be filed for the first time in the circuit court, since the court had jurisdiction of the case as appealed from the justice of peace court wherein the plaintiff's demand of $105 was within the jurisdiction of such court. Wright v. Thornton, 196 Miss. 395, 17 So. 2d 437, 1944 Miss. LEXIS 205 (Miss. 1944).

Law for validating bonds held not to divest circuit court of jurisdiction of appeals after order of issuance. Pearce v. Mantachie Consol. School Dist., 134 Miss. 497, 99 So. 134, 1924 Miss. LEXIS 287 (Miss. 1924).

Decisions of the secretary of the state may be reviewed by the circuit court on certiorari. Power v. Robertson, 130 Miss. 188, 93 So. 769, 1922 Miss. LEXIS 196 (Miss. 1922).

Where a plaintiff dismisses his appeal from a judgment against him in a justice's court in an attachment suit the court may notwithstanding allow a claimant's issue to be made up and tried. Dreyfus v. Mayer, 69 Miss. 282, 12 So. 267, 1891 Miss. LEXIS 107 (Miss. 1891).

The court, by the common law and without a statute, has jurisdiction upon certiorari to examine and reverse judicial proceedings before the mayor of a municipality. Holberg v. Macon, 55 Miss. 112, 1877 Miss. LEXIS 115 (Miss. 1877).

This rule does not apply in unlawful entry and detainer cases. Poston v. MHOON, 49 Miss. 620, 1873 Miss. LEXIS 154 (Miss. 1873).

Circuit court by consolidating several cases on appeal from a justice of the peace court did not lose jurisdiction because the aggregate amount was in excess of the jurisdiction of the justice of the peace. Ammons v. Whitehead, 31 Miss. 99, 1856 Miss. LEXIS 40 (Miss. 1856); McLendon v. Pass, 66 Miss. 110, 5 So. 234, 1888 Miss. LEXIS 71 (Miss. 1888).

The circuit court, on an appeal or certiorari from a justice of the peace, has such jurisdiction only as the justice had. Glass v. Moss, 2 Miss. 519, 1837 Miss. LEXIS 9 (Miss. 1837); Crapoo v. Grand Gulf, 17 Miss. 205, 1848 Miss. LEXIS 4 (Miss. 1848); Stier v. Surget, 18 Miss. 154, 1848 Miss. LEXIS 67 (Miss. 1848); Scofield v. Pensons, 26 Miss. 402, 1853 Miss. LEXIS 108 (Miss. 1853), overruled, Pittman v. Chrisman, 59 Miss. 124, 1881 Miss. LEXIS 82 (Miss. 1881); Askew v.

Askew, 49 Miss. 301, 1873 Miss. LEXIS 115 (Miss. 1873); Bell v. West Point, 51 Miss. 262, 1875 Miss. LEXIS 43 (Miss. 1875).

RESEARCH REFERENCES

ALR.

Constitutional rights of owner as against destruction of building by public authorities. 14 A.L.R.2d 82.

Re-employment of discharged servicemen. 29 A.L.R.2d 1279.

Power of state court to decline jurisdiction of action under Federal Employers' Liability Act. 43 A.L.R.2d 774.

Constitutionality of arbitration statutes. 55 A.L.R.2d 432.

Municipal immunity from liability for torts. 60 A.L.R.2d 1198.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators. 65 A.L.R.2d 755.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Action for death caused by maritime tort within a state's territorial waters. 71 A.L.R.2d 1296.

State's power to subject nonresident individual other than a motorist to jurisdiction of its courts in action for tort committed within state. 78 A.L.R.2d 397.

Authority of District Court to order telephone company to assist law enforcement agents in tracing telephone calls. 58 A.L.R. Fed. 719.

Minimum amount in controversy requirement for actions brought against carrier on bill of lading or receipt under 49 USCS § 11707 ("Carmack Amendment"). 66 A.L.R. Fed. 737.

Civil actions removable from state court to federal court under 28 U.S.C.S. § 1443. 159 A.L.R. Fed. 377.

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 57 et seq.

CJS.

21 C.J.S., Courts §§ 9, 10.

§ 9-7-83. Jurisdiction of cases transferred or remanded to it.

The circuit court shall have jurisdiction of all cases transferred to it by the chancery court or remanded to it by the supreme court.

HISTORY: Codes, 1892, § 646; 1906, § 703; Hemingway's 1917, § 482; 1930, § 491; 1942, § 1429.

Cross References — Constitutional provision for transfer to circuit court of causes erroneously brought in chancery court, see Miss. Const. Art. 6, § 162.

JUDICIAL DECISIONS

1. In general.

In an action by the members of a Confederate Veterans society against a university for violating Miss. Code Ann. § 55-15-81, the circuit court properly ruled that, despite their argument to the contrary and the nomenclature used, the case was a mandamus action and not one for injunctive relief, denied the members' motion to retransfer to the chancery court, and granted a university's motion to dismiss the action for lack of standing because the members failed to challenge the judgment from the chancery court transferring the case, the circuit court had jurisdiction under two statutes, and the members had no private right that entitled them to require that the university refrain from implementing its diversity plan. Miss. Div. of Sons of Confederate Veterans v. Univ. of Miss., 269 So. 3d 1235, 2018 Miss. App. LEXIS 425 (Miss. Ct. App. 2018).

Section 162 of the Constitution, providing that causes brought in chancery court of which circuit court has exclusive jurisdiction shall be transferred to the circuit court, is mandatory and applies to appeals from county court. W. Horace Williams Co. v. Federal Credit Co., 198 Miss. 111, 21 So. 2d 582, 1945 Miss. LEXIS 173 (Miss. 1945).

In the case of an erroneous transfer of an action by the state tax collector to recover the penalty for the unlawful sale of intoxicating liquors and for the abatement of a nuisance from the chancery to the circuit court, the circuit court should and must proceed with the case, since there is no appeal from such erroneous transfer and no provision made for its correction. Craig v. Woods, 190 Miss. 258, 199 So. 772, 1941 Miss. LEXIS 45 (Miss. 1941).

Where an action by the state tax collector for the recovery of penalties for the unlawful sale of intoxicating liquors and for general equitable relief was erroneously transferred from the chancery court to the circuit court, and it did not appear that any substantial right of the complainant was affected by the erroneous transfer, the only course open to the circuit court was to dismiss the action upon complainant's refusal to proceed. Craig v. Woods, 190 Miss. 258, 199 So. 772, 1941 Miss. LEXIS 45 (Miss. 1941).

Where cause was transferred from chancery court to circuit court, latter acquired jurisdiction whether it was of law cognizance or not. Warner v. Hogin, 148 Miss. 562, 114 So. 347, 1927 Miss. LEXIS 39 (Miss. 1927); Dunn v. Dent, 176 Miss. 786, 170 So. 299, 1936 Miss. LEXIS 174 (Miss. 1936).

§ 9-7-85. Jurisdiction; suit for sum below.

If a suit shall be brought in the circuit court for a sum of less than the court can take cognizance of, or if a greater sum than is due shall be demanded, on purpose to confer jurisdiction, the complaint shall be involuntarily dismissed pursuant to the Mississippi Rules of Civil Procedure; and if the plaintiff, in any case, shall not recover more than the minimal jurisdictional amount, he shall not recover any costs of the defendant unless the judge shall be of the opinion, and so enter on the record, that the plaintiff had reasonable ground to expect to recover more than the minimal jurisdictional amount, or unless the court shall have jurisdiction of the cause, without respect to the amount in controversy.

HISTORY: Codes, Hutchinson's 1848, ch. 58, art. 1 (11); 1857, ch. 61, art. 33; 1871, § 666; 1880, § 1497; 1892, § 649; 1906, § 706; Hemingway's 1917, § 485; 1930, § 494; 1942, § 1432; Laws, 1991, ch. 573, § 9, eff from and after July 1, 1991.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Evasion of jurisdictional amount.
3. Recovery of costs.

1. In general.

The statute only relates to actions ex contractu. Kansas City, M. & B. R. Co. v. Mabry, 67 Miss. 131, 7 So. 224, 1889 Miss. LEXIS 50 (Miss. 1889).

The entry of the opinion of the judge that the plaintiff had ground to expect to recover over two hundred dollars must be made at the term at which the judgment is rendered. Shackelford v. M. P. Levy & Co., 63 Miss. 125, 1885 Miss. LEXIS 30 (Miss. 1885).

2. Evasion of jurisdictional amount.

The jurisdiction of the court, where the affidavit in replevin shows the proper amount, can only be defeated by showing that a false valuation of the property was made on "purpose to confer jurisdiction." On this point this section [Code 1942,

§ 1432] applies to the courts of justices of the peace as well as circuit courts. Ball, Brown & Co. v. Sledge, 82 Miss. 749, 35 So. 447, 1903 Miss. LEXIS 203 (Miss. 1903).

The test of jurisdiction is the amount demanded in the pleadings, subject to be defeated, if shown to be an attempt to evade the statute. Fenn v. Harrington, 54 Miss. 733, 1877 Miss. LEXIS 91 (Miss. 1877).

It must appear that a greater sum than $200.00 was demanded on purpose to evade the law requiring suits for sums of and under that amount to be brought before a justice of the peace, or the plaintiff cannot be nonsuited. Griffin v. Lower, 37 Miss. 458, 1859 Miss. LEXIS 38 (Miss. 1859).

3. Recovery of costs.

In action against Federal Housing Authority under Contract Settlement Act of 1944, court should include in final judgment an allowance of attorney fees equal to minimum fee for collections fixed by local bar association, which fee should include fee for partial payments collected before suit through efforts of attorney. Walsh Const. Co. v. Davis, 204 Miss. 509, 37 So. 2d 757, 1948 Miss. LEXIS 385 (Miss. 1948).

Where the plaintiff brought an action for wrongful removal of timber to the plaintiff's damage in the sum of $525, and he recovered only $40, he was not entitled to costs against the defendant in the absence of a finding and entry in the record by the trial judge that plaintiff had reason to expect to recover more than the jurisdictional amount of $200. Gulf Refining Co. v. Miller, 153 Miss. 741, 121 So. 482, 1929 Miss. LEXIS 75 (Miss. 1929).

A plaintiff recovering less than $200.00 where the record does not show that the judge trying the case held that the plaintiff reasonably expected to recover more than $200.00 cannot tax the defendant with the cost. Gulfport Turpentine Co. v. Strickland, 115 Miss. 1, 75 So. 689, 1917 Miss. LEXIS 175 (Miss. 1917).

RESEARCH REFERENCES

ALR.

Venue of actions or proceedings against public officers. 48 A.L.R.2d 423.

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 57 et seq.

CJS.

21 C.J.S., Courts §§ 22 et seq.

§ 9-7-87. Special terms; jurisdiction; juries for.

At a special term the circuit court may impanel grand and petit juries, and shall have jurisdiction to hear and determine all civil and criminal business, in the same manner as at a regular term.

Parties and witnesses shall be bound to attend; and witnesses duly subpoenaed or bound by recognizance, shall be subject to the same penalties for failure to attend as if such failure had occurred at a regular term. On receiving the order for a special term, if it be held because of a failure of a regular term, the proper officers shall open the envelopes containing the names of the jurors for such regular term, if it has not been done, and the venire facias shall issue and the jurors be summoned as required by law; but if there be no such envelopes, the jurors shall be drawn as provided in case of a failure of the judge to draw them. The judge may direct whether jurors shall be summoned and how they shall be drawn.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 8 (2); 1857, ch. 61, art. 4; 1871, § 878; 1880, § 1482; 1892, § 630; 1906, § 688; Hemingway's 1917, § 466; 1930, § 475; 1942, § 1413.

Cross References — Special term of Supreme Court, see § 9-3-5.
Empaneling juries generally, see §§ 13-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

Special term for criminal business at time statute provided for civil term devoted exclusively to civil business, was unauthorized, and indictment was nullity. Williams v. State, 156 Miss. 346, 126 So. 40, 1930 Miss. LEXIS 181 (Miss. 1930).

Proceedings at a term unauthorized are void. Arbour v. Yazoo & Miss. V. Ry. Co., 96 Miss. 340, 98 Miss. 714, 54 So. 158 (1911).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts § 23.

47 Am. Jur. 2d, Jury §§ 95, 98, 104, 108- 122–143.

CJS.

21 C.J.S., Courts §§ 161-163.

50A C.J.S., Juries §§ 143-189.

§ 9-7-89. Motions against officers for money collected.

The circuit court shall hear and determine all motions against attorneys at law, sheriffs, coroners, and other officers, for money collected or received as such, and not paid over on demand to the party entitled to the same, and may give judgment and award execution thereon.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 2 (164); 1857, ch. 61, art. 30; 1871, § 523; 1880, § 1494; 1892, § 647; 1906, § 704; Hemingway's 1917, § 483; 1930, § 492; 1942, § 1430.

Cross References — Eminent domain proceedings, see § 11-27-3.

§ 9-7-91. Judgments and executions.

The circuit court may render judgments according to the principles and usages of law, in all cases cognizable before it, and award executions, directed to the sheriff or other proper officer of any county. The court, upon legal conviction of a person of a crime or misdemeanor, shall proceed to judgment and award execution thereon as the law directs.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 1 (147); 1857, ch. 61, art. 31; 1871, § 521; 1880, § 1495; 1892, § 648; 1906, § 705; Hemingway's 1917, § 484; 1930, § 493; 1942, § 1431.

Cross References — Transfer of cases from county courts to circuit court in nineteenth circuit court district, see § 9-7-95.
Uniform enforcement of foreign judgments, see § 11-7-301 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Judgment in general.
2. Validity of judgment.
3. Operation and effect.
4. Lien of judgment.
5. Vacation of judgment.
6. Reversal of judgment.
7. Res judicata.
8. Action on judgment.

1. Judgment in general.

A judgment is not a contract. Berkson v. Cox, 73 Miss. 339, 18 So. 934, 1895 Miss. LEXIS 120 (Miss. 1895).

2. Validity of judgment.

No lapse of time will help the validity of a void judgment. Lester v. Miller, 76 Miss. 309, 24 So. 193, 1898 Miss. LEXIS 74 (Miss. 1898).

A judgment in replevin against principal and surety if rendered after the death of the surety is void as to both. Weis v. Aaron, 75 Miss. 138, 21 So. 763, 1897 Miss. LEXIS 98 (Miss. 1897), overruled, Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

A suit on a judgment on a note for a gambling contract can be defeated by showing the illegality of the original transaction. Campbell v. New Orleans Nat'l Bank, 74 Miss. 526, 21 So. 400, 1896 Miss. LEXIS 177 (Miss. 1896).

A judgment based upon a summons issued in term-time, returnable instanter, though not taken until the next term, is void. Joiner v. Delta Bank, 71 Miss. 382, 14 So. 464, 1893 Miss. LEXIS 187 (Miss. 1893).

The entry of a void judgment does not operate as a discontinuance of the cause. Moore v. Hoskins, 66 Miss. 496, 6 So. 500, 1889 Miss. LEXIS 136 (Miss. 1889).

In attacking a judgment for want of notice the most convincing proof must be made. Duncan v. Gerdine, 59 Miss. 550, 1882 Miss. LEXIS 158 (Miss. 1882); Quarles v. Hiern, 70 Miss. 891, 14 So. 23, 1893 Miss. LEXIS 68 (Miss. 1893).

3. Operation and effect.

A judgment by default in a suit to enforce a mechanic's lien must be limited to matters of right averred in the petition and cannot be extended by its prayer. Reid v. Gregory, 78 Miss. 247, 28 So. 835, 1900 Miss. LEXIS 102 (Miss. 1900).

Creditors may obtain personal judgments against a defendant in attachments, notwithstanding he has enjoined them from proceeding in their suit against the property in his personal possession claimed to be in custodia legis, and defendant, failing to defend on the merits, is bound by such judgments. Hart v. Livermore Foundry & Mach. Co., 72 Miss. 809, 17 So. 769, 1895 Miss. LEXIS 30 (Miss. 1895).

In a controversy between the judgment creditor and a third person, the judgment is prima facie evidence of indebtedness. Aron v. Chaffe, 72 Miss. 159, 17 So. 11, 1894 Miss. LEXIS 127 (Miss. 1894).

4. Lien of judgment.

Where several judgments against the same person are rendered on the same day the priority of lien exists in the order of rendition and the entries on the minutes are conclusive as to this. Herron v. Walker, 69 Miss. 707, 12 So. 259, 1892 Miss. LEXIS 16 (Miss. 1892).

5. Vacation of judgment.

Where there is no levy or garnishment in the county where rendered, the judgment for the debt in attachment should be set aside for want of jurisdiction. Campbell v. Triplett, 74 Miss. 365, 20 So. 844, 1896 Miss. LEXIS 112 (Miss. 1896).

Unless a judgment is void, it cannot, at a subsequent term, be vacated or reversed by the court rendering it. Alabama & V. R. Co. v. Bolding, 69 Miss. 255, 13 So. 844, 1891 Miss. LEXIS 170 (Miss. 1891).

A judgment without service of process may be set aside upon motion. Meyer Bros. v. Whitehead, 62 Miss. 387, 1884 Miss. LEXIS 90 (Miss. 1884); Newman v. Taylor, 69 Miss. 670, 13 So. 831, 1892 Miss. LEXIS 41 (Miss. 1892).

Upon motion, a judgment made upon return of personal service may be vacated at a subsequent term upon proof that the return is false. Meyer Bros. v. Whitehead, 62 Miss. 387, 1884 Miss. LEXIS 90 (Miss. 1884).

6. Reversal of judgment.

A judgment by default predicated of a declaration which wholly fails to statea cause of action will be reversed on appeal. Bradstreet Co. v. Jackson, 81 Miss. 233, 32 So. 999, 1902 Miss. LEXIS 140 (Miss. 1902).

Where the scire facias is not supported in a material particular by the judgment nisi, a judgment final inconsistent with the judgment nisi is erroneous, and, if to a party's prejudice, must be reversed. Smith v. State, 76 Miss. 728, 25 So. 491, 1899 Miss. LEXIS 8 (Miss. 1899).

In view of Const. 1890 § 147, a judgment on a claimant's issue will not be reversed because it appears the successful claimant had only an equitable title. Goyer Cold-Storage Co. v. Wildberger, 71 Miss. 438, 15 So. 235, 1893 Miss. LEXIS 92 (Miss. 1893).

7. Res judicata.

A dismissal without prejudice does not bar a new suit on the same cause of action. Cole v. Fagan, 108 Miss. 100, 66 So. 400, 1914 Miss. LEXIS 176 (Miss. 1914); Germain v. Harwell, 108 Miss. 396, 66 So. 396, 1914 Miss. LEXIS 175 (Miss. 1914).

A suit for damage from flooding lands where there has been a recovery does not bar a second action for a subsequent like injury. Rosamond v. Carroll County, 101 Miss. 701, 57 So. 979, 1911 Miss. LEXIS 144 (Miss. 1911).

A judgment against a garnishee is not a bar to a suit against him by his creditor, but execution on the judgment in such suit should be stayed as to an amount equal to the judgment against the garnishee. Yazoo & M. V. R. Co. v. Fulton, 71 Miss. 385, 14 So. 271, 1893 Miss. LEXIS 166 (Miss. 1893).

8. Action on judgment.

In a suit on a domestic judgment its nature cannot be changed. The new judgment must be the same in kind. McInnis v. Graves, 80 Miss. 632, 31 So. 902, 1902 Miss. LEXIS 269 (Miss. 1902).

RESEARCH REFERENCES

ALR.

Modern views of state courts as to whether consent judgment is entitled to res judicata or collateral estoppel effect. 91 A.L.R.3d 1170.

§ 9-7-93. Time may be allotted by court for civil and criminal business separately.

In the county where it may be necessary, in the discretion of the court or judge, the court may designate a certain portion of the time allotted for the holding of court exclusively to the civil business and a certain portion of the time exclusively to the hearing of criminal business, and in cases where the court or judge does this, the court or judge shall so allot the time as to meet the necessities of the criminal and civil business, and, in all cases where it is practical to do so, the court or judge shall separate the civil and criminal business, so that certain time shall be devoted to each.

HISTORY: Codes, Hemingway's 1917, § 468; 1930, § 477; 1942, § 1415; Laws, 1906, ch. 106.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts § 23.

CJS.

21 C.J.S., Courts §§ 151, 152.

§ 9-7-95. Transfer for trial of cases filed in county courts in nineteenth district.

Cases filed in the county courts of any county in the nineteenth circuit court district, with the exception of equity and youth court cases, at the discretion of the county court judge, and with the consent of the circuit judge, may be transferred for trial to the circuit courts of such district, and the judgment rendered thereon on any such transferred case in the circuit court shall be a final judgment and shall be appealable in the same manner as now provided by law for appeals from final judgments rendered by circuit courts.

HISTORY: Codes, 1942, § 1411.7; Laws, 1962, ch. 296, §§ 1-8; Laws, 1964, ch. 318, §§ 1, 2, 4 (¶¶ 2, 4, 7); Laws, 1970, ch. 332, § 1, eff from and after passage (approved April 3, 1970).

CIRCUIT CLERKS

Sec.

9-7-121. Clerk; oath of office and bond.
9-7-122. Training and continuing education requirements for circuit clerks; filing of certificate of compliance; penalty for failure to file; courses; expenses; continuing education credit for attendance at circuit court proceedings; compliance with Section 9-1-46.
9-7-123. Appointment of deputy clerks; oath; bond.
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9-7-125. Deputy circuit clerks; appointment and payment in certain counties.
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9-7-129. List of allowances against county treasury.
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9-7-139. Recordation of pardons in county of conviction.
9-7-141. Circuit court clerk's office at Biloxi.

§ 9-7-121. Clerk; oath of office and bond.

The clerk of the circuit court, before he enters upon the duties of the office, shall take the oath of office, and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to three percent (3%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for such clerk. However, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). And he may be required to give additional bond from time to time, for the faithful application of all moneys coming into his hands by law or order of the court; but such additional bonds shall be cumulative security, and the original bond shall likewise cover all moneys coming into the hands of the clerk by law or order of the court.

HISTORY: Codes, Hutchinson's 1848, ch. 27, art. 2 (9); 1857, ch. 61, art. 16; 1871, § 550; 1880, § 1484; 1892, § 633; 1906, § 690; Hemingway's 1917, § 469; 1930, § 478; 1942, § 1416; Laws, 1986, ch. 458, § 11; reenacted, Laws, 1989, ch. 343, § 1; Laws, 1992, ch. 386, § 1, eff from and after July 1, 1992.

Editor's Notes — Section 48, Chapter 458, Laws, 1986, provided that § 9-7-121 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws, 1986, by deleting the date for repeal.

Cross References — Constitutional authority for the office of clerk of the circuit court, see Miss. Const. Art. 6, Art. § 168.

Provisions common to clerks, see §§ 9-1-27 et seq.

Clerks serving in separate judicial districts, see § 9-1-39.

Circuit clerk maintaining a permanent record of pardons, see § 9-7-139.

Circuit clerk's duties in connection with record of pardons, see § 9-7-139.

Circuit clerk's duties as clerk of the county court, see § 9-9-29.

Circuit clerk's duties as custodian of depositions, exhibits, maps, etc., see § 9-13-27.

Requirement of additional bonds for chancery clerk, see § 11-5-165.

Responsibilities of circuit clerks relative to provisions requiring disclosure of campaign finances, see §§ 23-15-805 and 23-15-815.

Responsibilities of circuit clerks relative to election contests, see §§ 23-15-911, 23-15-927, 23-15-931, and 23-15-951.

Maintenance by the circuit clerk of a list of persons convicted of felonies other than manslaughter or of violating the U.S. Internal Revenue Code, for the purpose of purging voter registration records, see § 23-15-151.

Provision that circuit clerks shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Provision that the circuit clerk shall be the custodian of optical mark reading equipment acquired by a county as part of a voting system, see § 23-15-515.

Approval and filing of oaths and bonds of public officials, see §§ 25-1-9 et seq.

Location and hours of office of circuit clerk, see § 25-1-99.

Same person holding the offices of circuit and chancery clerk, see § 25-1-103.

Fees of clerk, see § 25-7-13.

Prohibition against the practice of law, see § 73-3-43.

Crime of altering records, see § 97-11-1.

Clerk's duty to keep papers, see Miss. Uniform Circuit & County Court Rule 1.12.

OPINIONS OF THE ATTORNEY GENERAL

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131,

9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Clerks of Court §§ 1 et seq.

20 Am. Jur. 2d (Rev), Courts §§ 1- 7.

3B Am. Jur. Legal Forms 2d, Bonds § 43:18.

CJS.

21 C.J.S., Court §§ 327-351.

21 C.J.S., Courts § 136.

§ 9-7-122. Training and continuing education requirements for circuit clerks; filing of certificate of compliance; penalty for failure to file; courses; expenses; continuing education credit for attendance at circuit court proceedings; compliance with Section 9-1-46.

(1) Except as otherwise provided herein, no circuit clerk elected for a full term of office commencing on or after January 1, 1996, shall exercise any functions of office or be eligible to take the oath of office unless and until the circuit clerk has filed in the office of the chancery clerk a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center within six (6) months of the beginning of the term for which such circuit clerk is elected. A circuit clerk who has completed the course of training and education and has satisfied his annual continuing education course requirements, and who is then elected for a succeeding term of office subsequent to the initial term for which he completed the training course, shall not be required to repeat the training and education course upon reelection. A circuit clerk that has served either a full term of office or part of a term of office before January 1, 1996, shall be exempt from the requirements of this subsection.

(2) In addition to meeting the requirements of subsection (1) of this section, after taking office by election or otherwise, each circuit clerk shall be required to file annually in the office of the chancery clerk a certificate of completion of a course of continuing education conducted by the Mississippi Judicial College. No circuit clerk shall have to comply with this subsection unless he will have been in office for five (5) months or more during a calendar year.

(3) Each circuit clerk elected for a term commencing on or after January 1, 1992, shall be required to file annually the certificate required in subsection (2) of this section commencing January 1, 1993.

(4) The requirements for obtaining the certificates in this section shall be as provided in subsection (6) of this section.

(5) Upon the failure of any circuit clerk to file with the chancery clerk the

certificates of completion as provided in this section, such circuit clerk shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to any fee, compensation or salary, from any source, for services rendered as circuit clerk, for the period of time during which such certificate remains unfiled.

(6) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct courses of training for basic and continuing education for circuit clerks of this state. The basic course of training shall be known as the "Circuit Clerks Training Course" and shall consist of at least thirty-two (32) hours of training. The continuing education course shall be known as the "Continuing Education Course for Circuit Clerks" and shall consist of at least eighteen (18) hours of training. The content of the basic and continuing education courses and when and where such courses are to be conducted shall be determined by the judicial college. The judicial college shall issue certificates of completion to those circuit clerks who complete such courses.

(7) The expenses of the training, including training of those elected as circuit clerk who have not yet begun their term of office, shall be borne as an expense of the office of the circuit clerk.

(8) Circuit clerks shall be allowed credit toward their continuing education course requirements for attendance at circuit court proceedings if the presiding circuit court judge certifies that the circuit clerk was in actual attendance at a term or terms of court; provided, however, that at least twelve (12) hours per year of the continuing education course requirements must be completed at a regularly established program or programs conducted by the Mississippi Judicial College.

(9) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall certify to the Mississippi Judicial College the names of all circuit clerks who have failed to provide the information required by Section 9-1-46. The judicial college shall not issue a certificate of continuing education required by subsection (2) of this section to any such clerk, and shall report to the State Auditor, and the board of supervisors of the county the clerk is elected from that the clerk shall not be entitled to receive the compensation set out in subsection (5) of this section. A clerk may be certified after coming into compliance with the requirements of Section 9-1-46.

HISTORY: Laws, 1992, ch. 416, § 1; Laws, 1993, ch. 595, § 3; Laws, 1995, ch. 375, § 1; Laws, 2014, ch. 457, § 69, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (3) by substituting "subsection (2) of this section" for "subsection (2) of this action." The Joint Committee ratified the correction at its August 17, 2015, meeting.

§ 9-7-123. Appointment of deputy clerks; oath; bond.

(1) The clerk of the circuit court shall have power, with the approbation of the court, or of the judge in vacation, to appoint one or more deputies, who

shall take the oath of office and may give bond, and who thereupon shall have power to do and perform all the acts and duties which their principal may lawfully do; such approval, when given by the judge in vacation, shall be in writing, and shall be entered on the minutes of the court at the next term.

(2) Each deputy clerk of the circuit court, before he enters upon the duties of the appointment, shall take the oath of office, and shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to three percent (3%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for the circuit clerk. However, the amount of such bond shall not be less than Fifty Thousand Dollars ($50,000.00) nor more than One Hundred Thousand Dollars ($100,000.00). The bond shall cover all monies coming into the hands of the deputy clerk by law or order of the court. The board of supervisors, in its discretion, may pay the bond on behalf of the deputy clerk.

HISTORY: Codes, Hutchinson's 1848, ch. 27, class 2, art. 1 (12), class 3, art. 1 (10); 1857, ch. 61, art. 17, ch. 62, art. 13; 1871, §§ 551, 990; 1880, § 2281; 1892, § 930; 1906, § 1006; Hemingway's 1917, § 726; 1930, § 747; 1942, § 1662; Laws, 1999, ch. 380, § 1; Laws, 2009, ch. 467, § 1, eff from and after July 1, 2009.

JUDICIAL DECISIONS

1. In general.

Since circuit clerks were authorized by Miss. Code Ann. § 9-7-123 to hire deputy clerks, Miss. Code Ann. § 9-7-126 authorized circuit clerks to supervise the public duties of the deputy clerks who were deemed to be employees of the county, and Miss. Code Ann. § 9-7-126 required that county boards of supervisors defray the salaries of deputy clerks with funds from the county treasury, the fact that circuit clerks received county funds to pay deputies and that clerks controlled those county employees strongly weighed in favor of finding that clerks were county agents for purposes of 18 U.S.C.S. § 666(d)(1). United States v. Harris, 2007 U.S. Dist. LEXIS 50575 (S.D. Miss. July 11, 2007), aff'd, 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

Acting as guardian of the person or estate of an habitual drunkard is not one of the ex officio duties of a clerk of the chancery court, but devolves upon him when, but not unless, he is appointed as such by a decree of that court, and therefore is not within the ex officio powers vested in a deputy chancery clerk by the statute. O'Bannon v. Henrich, 191 Miss. 815, 4 So. 2d 208, 1941 Miss. LEXIS 176 (Miss. 1941).

Deputy circuit clerk may appoint justice of peace to preside over eminent domain court. Western Union Tel. Co. v. Louisville & N. R. Co., 107 Miss. 626, 65 So. 650, 1914 Miss. LEXIS 129 (Miss. 1914), aff'd, 250 U.S. 363, 39 S. Ct. 513, 63 L. Ed. 1032, 1919 U.S. LEXIS 1756 (U.S. 1919).

OPINIONS OF THE ATTORNEY GENERAL

A board of supervisors is vested with the power to purchase real estate on which to construct public health buildings and clinics sponsored by the public health units of any county, or a public health building to house the county health department, out of the general fund and, provided that ultimate control and management of the facilities remains in the hands of local government, the operation of the building may be done pursuant to contract. Gex, January 9, 1998, A.G. Op. #97-0801.

Only the clerk and his or her sworn deputy clerk have the authority to keep or make entries to the general docket, whether that docket be bound book or on computer. Ashley, Jan. 31, 2003, A.G. Op. #03-0755.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of Court § 43.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-7-124. Appointment of temporary deputies to assist circuit clerk of county.

(1) The board of supervisors of any county, in its discretion, may authorize the circuit clerk of the county to appoint one or more temporary full-time or temporary part-time deputies for the purpose of assisting the circuit clerk in the performance of duties relating to certification of signatures on initiative petitions as provided by Section 23-17-21.

(2) The salary of any temporary deputy clerk appointed under the provisions of subsection (1) of this section shall be established by the board of supervisors and paid out of any available funds in the county general fund.

HISTORY: Laws, 1997, ch. 323, § 1, eff from and after July 1, 1997.

§ 9-7-125. Deputy circuit clerks; appointment and payment in certain counties.

(1) The circuit clerk of every county wherein is partially located a national forest and wherein U. S. Highway 49 and Mississippi Highway 26 intersect may appoint a full-time or part-time deputy to insure the efficient operation of the office of circuit clerk of said county.

(2) The boards of supervisors in said counties are authorized to pay to said circuit clerk a sum not to exceed three hundred dollars ($300.00) per month for employment of such deputy.

HISTORY: Codes, 1942, § 1662.5; Laws, 1964, ch. 278, § 1; Laws, 1972, ch. 387, § 1, eff from and after passage (approved April 26, 1972).

§ 9-7-126. Additional remuneration to circuit court clerks for salaries of deputy circuit clerks.

(1) There shall be allowed out of the county treasury from the general county funds, or any other available funds payable monthly by the board of supervisors of the county, not less than the following amounts for the purposes of defraying the salaries of deputy circuit clerks:

Class 1 and 2 counties not less than Four Hundred Fifty Dollars ($450.00) per month;

Class 3 and 4 counties not less than Three Hundred Fifty Dollars ($350.00) per month;

Class 5, 6, 7 and 8 counties not less than Two Hundred Fifty Dollars ($250.00) per month.

The above and foregoing allowances shall be for the purposes of defraying the salaries of deputy circuit clerks provided such allowance, and upon written request of the circuit clerk, shall be paid directly to the deputy circuit clerk designated by him, in the absence of which request, the allowance shall be paid monthly to the circuit clerk. Deputy circuit clerks employed under authority of this section shall be deemed employees of the county. The clerk shall select and supervise their public duties.

(2) This section shall not apply to any county having a county court except that in any county in which U.S. Highway 49 and Mississippi Highway 6 intersect, any county in which U.S. Highway 61 and Mississippi Highway 4 intersect, any county having a population in excess of fifty-seven thousand (57,000) and which is traversed by the Tennessee-Tombigbee Waterway or whose county seat is within twenty (20) miles of the Tennessee-Tombigbee Waterway, any county bordering the State of Tennessee and the Mississippi River, any county in which U.S. Highway 61 and U.S. Highway 82 intersect, any county in which U.S. Highway 61 and Mississippi Highway 8 intersect, any county in which U.S. Highway 82 and U.S. Highway 49E intersect, any county in which U.S. Highway 49 and Mississippi Highway 16 intersect and which is traversed by Interstate Highway 55, and any county in which Highway 589 and Highway 98 intersect, the provisions of this section shall be discretionary with the respective board of supervisors.

HISTORY: Codes, 1942, § 3934.9; Laws, 1972, ch. 467, §§ 1, 2; Laws, 1975, ch. 424; Laws, 1986, ch. 402; Laws, 1994, ch. 499, § 1; Laws, 1999, ch. 496, § 1; Laws, 2009, ch. 422, § 1, eff from and after July 1, 2009.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Miscellaneous.

1. In general.

In a case in which defendant, a former county circuit clerk, was convicted of embezzlement, in violation of 18 U.S.C.S. § 666(a)(1), he argued unsuccessfully that the district court erred by refusing to dismiss the embezzlement counts because he was not an agent of a county under 18 U.S.C.S. § 666(d)(1). Since (1) defendant directed and controlled deputy clerks, who were county employees; (2) as an officer of the county, he collected money belonging to the county; and (3) he was authorized to act on behalf of the county in directing county employees, defendant was an agent of the county. United States v. Harris, 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

Since circuit clerks were authorized by Miss. Code Ann. § 9-7-123 to hire deputy clerks, Miss. Code Ann. § 9-7-126 authorized circuit clerks to supervise the public duties of the deputy clerks who were deemed to be employees of the county, and Miss. Code Ann. § 9-7-126 required that county boards of supervisors defray the salaries of deputy clerks with funds from the county treasury, the fact that circuit clerks received county funds to pay deputies and that clerks controlled those county employees strongly weighed in favor of finding that clerks were county agents for purposes of 18 U.S.C.S. § 666(d)(1). United States v. Harris, 2007 U.S. Dist. LEXIS 50575 (S.D. Miss. July

11, 2007), aff'd, 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

2. Miscellaneous.

In a case in which defendant, a former county circuit clerk, was convicted of embezzlement, in violation of 18 U.S.C.S. § 666(a)(1), his reliance on the Phillips decision, a Louisiana case, was misplaced. In the Phillips case, defendant, a former tax assessor of a parish, was not an agent of the parish under 18 U.S.C.S. § § 666(d)(1), because Louisiana law completely separated the tax assessor's office from the parish government; however, in Mississippi, circuit clerks were not completely separated from county governments in Mississippi, and the Phillips decision was not applicable in the present case. United States v. Harris, 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

OPINIONS OF THE ATTORNEY GENERAL

Board of supervisors is not required to contribute county funds in excess of statutory amounts; issue of compensating deputy circuit clerks whether for working overtime or otherwise is matter that must be resolved between clerk and his deputies, and is not issue that rests with board of supervisors. Slade, March 16, 1990, A.G. Op. #90-0175.

For purposes of the nepotism statute, the circuit clerk is the is the appointing authority of a deputy who is being paid by the board of supervisors. Dulaney, Aug. 27, 2004, A.G. Op. 04-0413.

If the Board of Supervisors chooses to pay only the $450.00 required in Miss. Code Ann. § 9-7-126 for a deputy clerk's salary, the employer's part of the social security withholding and Public Employee Retirement Systems contributions on the $450.00 must be paid by the county, and not by the circuit clerk. Bounds, March 9, 2007, A.G. Op. #07-00083, 2007 Miss. AG LEXIS 98.

§ 9-7-127. Final record to be made.

Within three (3) months after the final determination of any suit, or if an appeal shall have been taken, then within three (3) months after receiving a certificate of the affirmance of the judgment, the clerk shall enter in a well-bound book, to be kept for the purpose, a full and complete record of all the proceedings in the suit, if the title to the real estate be involved or affected, and if not, only on the order of the court. On failure to make a final record required by law or the order of the court, the clerk may be fined, as for a contempt, Twenty Dollars ($20.00) for each failure; and he shall also be liable in damages to any party injured. A final record shall not be made of any suit without a judgment on the merits. Such record may be kept on computer as provided in Section 9-7-171.

HISTORY: Codes, 1892, § 640; 1906, § 697; Hemingway's 1917, § 476; 1930, § 485; 1942, § 1423; Laws, 1994, ch. 521, § 18; Laws, 1994, ch. 458, § 6, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Clerks of Court §§ 20-22 et seq.

20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Appeal and Error, Form 542.1 (Notice to clerk to prepare record – Transcript of complete record – Another form).

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-7-128. Disposal and destruction of certain case files and loose records; electronic storage of certain files, records and documents.

(1) Where there is no requirement for a permanent record to be made, the clerk, upon order of the court, may dispose of and destroy all case files of the circuit or county court which have been in existence for ten (10) years or which have been reduced to judgment and that judgment satisfied and cancelled. The clerk may also dispose of and destroy any loose records not required by law to be kept as permanent records after a period of ten (10) years. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History.

(2) The files, records and other documents described herein may, upon order of the court in accordance with the provisions of this section, be electronically stored for convenience and efficiency in storage. The electronic storage of documents, for purposes of this section, shall have the same meaning as set forth in Section 9-1-51. In those counties electing to store files, records and documents by means of electronic storage, the following described case files shall be electronically stored after the time periods described below have elapsed:

(a) Cases in county criminal or civil court which have been dismissed or in which a judgment has been entered at least three (3) years prior to the date upon which they are electronically stored; and

(b) Cases in circuit, criminal or civil court which have been dismissed or in which a judgment has been entered at least five (5) years prior to the date upon which they are electronically stored.

(3) Nothing in this section shall serve as authority to destroy any docket book, minute book, issue docket, subpoena docket, witness docket book, execution docket book, voter registration book, marriage record book, trial order, abstract of judgment, judgment roll, criminal file where an indictment was returned and the defendant convicted if the file is not at least twenty (20) years old, habeas corpus docket, preliminary hearing docket or Court of Appeals or Supreme Court appeals docket.

HISTORY: Codes 1942, § 1423; Laws, 1972, ch. 461, § 1; Laws, 1981 ch. 501, § 19; Laws, 1987, ch. 470; Laws, 1993, ch. 518, § 23, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:
"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Archives and Records Management Law, generally, see §§ 25-59-21 et seq.

Requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 9-7-128, while by its terms applicable to circuit court, gives guidance as to legislative intent regarding destruction of justice court docket books; subsection (3) evinces intent that no docket book be destroyed; this has historically been position of Attorney General's office in regard to justice court docket books. Allen, Mar. 31, 1993, A.G. Op. #93-0077.

Municipal judge, under authority of Section 21-23-7(10) may adopt municipal analog of 9-7-128. Bellman, July 14, 1993, A.G. Op. #93-0339.

§ 9-7-129. List of allowances against county treasury.

Within ten days after each term of circuit court, it shall be the duty of the clerk to deliver to the clerk of the board of supervisors a certified list of allowances made by the court at such term, payable out of the county treasury, specifying the amount, to whom allowed, and on what account. For any failure to deliver such list, the clerk of the circuit court may be punished by the court as for a contempt.

HISTORY: Codes, 1880, § 1491; 1892, § 641; 1906, § 698; Hemingway's 1917, § 477; 1930, § 486; 1942, § 1424.

§ 9-7-131. Jury fee book.

The clerk of the circuit court shall keep a book to be called the "jury book," in which he shall enter the time of issuing all certificates to jurors, the amount thereof, and to whom issued. Such book may be kept by means of electronic filing or storage or both as provided in Sections 9-1-51 through 9-1-57, or otherwise, as the clerk may elect. Within ten (10) days after each term of the court, he shall file in the office of the clerk of the board of supervisors of his county a certified copy of such entries, for the information of the board. For any failure in this respect, the clerk of the circuit court may be fined and imprisoned by the court as for a contempt.

HISTORY: Codes, 1857, ch. 61, art. 145; 1871, § 746; 1880, § 1699; 1892, § 642; 1906, § 699; Hemingway's 1917, § 478; 1930, § 487; 1942, § 1425; Laws, 1994, ch. 521, § 19, eff from and after passage (approved March 25, 1994).

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Clerks of Court §§ 20 et seq.

§ 9-7-133. Jury tax imposed and how collected.

A jury tax of three dollars is imposed on each original suit in the circuit court in which a plea is filed, and on every issue therein tried separately by a jury, and a tax of two dollars on each case transferred or appealed thereto, to constitute a fund for the payment of jurors, and to be collected by the clerk or sheriff as costs. The clerk shall be liable on his official bond for any failure to charge, receive, or issue execution for the jury tax; and the sheriff shall likewise be liable for a failure to collect or to pay the same to the county treasurer; and they may be fined as for a contempt therefor not more than one hundred dollars.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 4 (1); 1857, ch. 61, art. 147; 1871, § 525; 1880, § 1700; 1892, § 643; 1906, § 700; Hemingway's 1917, § 479; 1930, § 488; 1942, § 1426.

RESEARCH REFERENCES

ALR.

Validity of law or rule requiring state court party who requests jury trial in civil case to pay costs associated with jury. 68 A.L.R.4th 343.

§ 9-7-135. Clerk to report list of cases subject to jury tax.

Within ten days after the end of any term of the court, the clerk shall furnish to the clerk of the board of supervisors a list of all judgments rendered and suits disposed of at such term, or in the preceding vacation, on which a jury tax is imposed, and shall pay over all sums received by him for jury tax during the term and since the last term, and for any failure shall be liable as provided by Section 9-7-133. And if any clerk shall fail to furnish the said list he shall be fined by the court in the sum of one hundred dollars, on motion of the clerk of the board of supervisors or the district attorney.

HISTORY: Codes, Hutchinson's 1848, ch. 61, art. 4 (3); 1857, ch. 61, art. 148; 1871, § 749; 1880, § 1701; 1892, § 644; 1906, § 701; Hemingway's 1917, § 480; 1930, § 489; 1942, § 1427.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Jury § 63.

§ 9-7-137. Register of sureties on bonds to be kept.

The clerk of the circuit court shall procure a well-bound book, arranged alphabetically and properly ruled, lined and headed to show the name of the principal and surety, name of principal obligor, name of obligee, date of bond, penalty of bond, kind of bond, where recorded if recorded, number of suit in which filed and date of discharge. In this he shall abstract each bond, when filed in his office, by entering in such record the name of each principal and surety, under the proper letter, the name of principal obligor, name of obligee, date, penalty, kind of bond, where recorded if recorded, and number of suit in which filed. And when such bond has been discharged, the date thereof shall be entered in said record under the proper heading. Such information may be kept on computer as provided in Section 9-7-171.

HISTORY: Codes, 1880, § 1375; 1892, § 2695; 1906, §§ 527, 3055; Hemingway's 1917, §§ 284, 2413; 1930, §§ 345, 2247; 1942, §§ 345, 1256; Laws, 1994, ch. 521, § 20; Laws, 1994, ch. 458, § 7, eff from and after July 1, 1994.

Cross References — Register of sureties on bonds to be kept by chancery clerks, see § 9-5-157.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. 2d, Bonds §§ 1 et seq.

§ 9-7-139. Recordation of pardons in county of conviction.

When a pardon may be granted by the governor to anyone convicted of a crime, two copies thereof shall be filed with the secretary of state in accordance with the provisions of Section 7-3-5, Mississippi Code of 1972. One such copy shall be retained by the secretary of state in a permanent register and the other copy shall be immediately forwarded by the secretary of state to the circuit clerk of the county in which such person was convicted. The county shall furnish and the circuit clerk shall maintain a permanent record of pardons and the circuit clerk may certify the fact of any recorded pardon for use in any court or agency, state or federal.

HISTORY: Codes, 1942, § 1427.5; Laws, 1964, ch. 368, eff from and after passage (approved June 11, 1964).

§ 9-7-141. Circuit court clerk's office at Biloxi.

(1) In Harrison County, a county having two (2) judicial districts, it shall be the duty of the clerk of the circuit court to keep in his office at Biloxi, all records, record books, electronic equipment, records and documents and other documents of every character which he is now required by law to keep in his office at Gulfport, and said records, record books and documents of whatever character or duly certified copies thereof shall have the same force and effect in law as they would have if said books, records and documents had been kept or preserved by him in his office at Gulfport. And likewise, it shall be the duty of the clerk of the circuit court of Harrison County, as clerk of county court to keep in his office at Biloxi, all of the records, record books and documents of every character which he is now required by law to keep in his office at Gulfport, and said records, books and documents, or duly certified copies thereof, shall likewise have the same force and effect in law as they would have if said books, records and documents had been kept or preserved by him in his office at Gulfport.

(2) The Secretary of State shall furnish to the Clerk of the Circuit Court of Harrison County, for the use of said court at Biloxi, a full set of the reports of the Supreme Court or court of last resort of this state, and all other books and laws which he shall at any time be required to deliver to the sheriff or the clerk of said county, in the several counties of this state; and also all other laws, maps and public documents required by law to be furnished, or usually furnished, to the sheriff or clerk of the circuit and chancery courts of this state under laws now or heretofore in force or that may hereafter be enacted.

HISTORY: Codes, 1942, §§ 2910-07, 2910-20; Laws, 1962, ch. 257, §§ 7, 20; Laws, 1994, ch. 521, § 21, eff from and after passage (approved March 25, 1994).

DOCKETS

Sec.
9-7-171. General docket.
9-7-173. Repealed.
9-7-175. Criminal docket.
9-7-177. Appearance docket.
9-7-179. Subpoena docket.
9-7-181. Execution docket.

§ 9-7-171. General docket.

(1) The clerk shall keep a general docket, in which he shall enter the names of the parties in each case, the time of filing the declaration, indictment, record from inferior courts on appeal or certiorari, petition, plea, or demurrer, and all other papers in the cause, the issuance and return of process, and a note of all judgments rendered therein, by reference to the minute book and page. He shall mark on the papers in every cause the style and number of the suit, and the time when, and the party by whom filed; and he shall not suffer any paper so filed to be withdrawn but by leave of the court, and then only by retaining a copy, to be made at the cost of the party obtaining the leave. All the papers and pleadings filed in a cause shall be kept in the same file, and all the files kept in numerical order. Entries in criminal cases shall not be made on the docket so as to disclose the names of the defendants until their arrest. And the docket shall be duly indexed, both directly and indirectly, in the alphabetical order of the names of each of the parties.

(2) The general docket required to be kept by this section and all other dockets or records required by law to be kept by the circuit clerk may be kept on computer in lieu of any other physical docket, record or well-bound book if all such dockets and records are kept by computer in accordance with regulations prescribed by the Administrative Office of Courts.

HISTORY: Codes, 1892, § 634; 1906, § 691; Hemingway's 1917, § 470; 1930, § 479; 1942, § 1417; Laws, 1994, ch. 521, § 22; Laws, 1994, ch. 458, § 1, eff from and after July 1, 1994.

Cross References — Minutes of circuit court, see § 9-1-33.

Assignment of cases and duties to county judges when dockets are overcrowded, see

§ 9-9-35.

Docketing circuit court judgments or decrees in arbitration proceedings arising out of controversies based on construction contracts and related agreements, see § 11-15-139.

For rule prescribing general docket entry requirements, see Miss. R. Civ. P. 79.

For rule pertaining to trial docket, see MRCrP 9.

JUDICIAL DECISIONS

1. Compliance.

Circuit clerk adequately complied with Miss. Code Ann. § 9-7-171 and Miss. R. Civ. P. 79 because no evidence was adduced that a docket entry was backdated. In re Dunn, 166 So. 3d 488, 2013 Miss. LEXIS 232 (Miss. 2013).

OPINIONS OF THE ATTORNEY GENERAL

Only the clerk and his or her sworn deputy clerk have the authority to keep or make entries to the general docket, whether that docket be bound book or on computer. Ashley, Jan. 31, 2003, A.G. Op. #03-0755.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Clerks of Court § 29.

20 Am. Jur. 2d, Courts §§ 53- 57.

CJS.

21 C.J.S., Courts §§ 327-351.

21 C.J.S., Courts §§ 246 et seq.

§ 9-7-173. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-7-173. [Codes, Hutchinson's 1848, ch. 53, art. 3; 1857, ch. 61, art. 20; 1871, § 557; 1880, § 1485; 1892, § 635; 1906, § 692; Hemingway's 1917, § 471; 1930, § 480; 1942, § 1418]

Editor's Notes — Former § 9-7-173 directed the clerk to prepare, before the start of the term, a docket of cases triable at the approaching term of the court, and directed the court to call cases in the order they appeared on the docket.

§ 9-7-175. Criminal docket.

The clerk shall make out for each term a separate docket of cases begun by indictment, presentment, information, or other proceedings of a criminal nature, in the name or on behalf of the state or any municipal corporation. Such docket may be kept on computer as provided in Section 9-7-171.

HISTORY: Codes, Hutchinson's 1848, ch. 53, art. 5; 1857, ch. 61, art. 21; 1871, § 559; 1880, § 1486; 1892, § 636; 1906, § 693; Hemingway's 1917, § 472; 1930, § 481; 1942, § 1419; Laws, 1994, ch. 521, § 23; Laws, 1994, ch. 458, § 2, eff from and after July 1, 1994.

Cross References — Assignment of cases and duties to county judges when dockets are overcrowded, see § 9-9-35.

Proceedings in criminal cases generally, see §§ 99-1-1 et seq.

For rule pertaining to trial docket, see MRCrP 9.

§ 9-7-177. Appearance docket.

The clerk shall keep an appearance docket, in which he shall enter all civil cases not triable at the first term after they are begun, in the order in which they are commenced, with the date of such commencement. Such docket may be kept on computer as provided in Section 9-7-171.

HISTORY: Codes, 1857, ch. 61, art. 22; 1871, § 558; 1880, § 1487; 1892, § 637; 1906, § 694; Hemingway's 1917, § 473; 1930, § 482; 1942, § 1420; Laws, 1994, ch. 521, § 24; Laws, 1994, ch. 458, § 3, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

CJS.

21 C.J.S., Courts §§ 246 et seq.

§ 9-7-179. Subpoena docket.

The clerk shall keep a subpoena docket, in which he shall enter the style and number of each case in which a subpoena for a witness is issued, the name of the party for whom the witness is subpoenaed, to whom the subpoena is directed, the date of its issuance, when returnable, whether or not executed. He shall therein keep an account of all witnesses who may be absent when the case in which they have been subpoenaed is called for trial, or who may disqualify themselves from giving testimony by being intoxicated when such case is tried; and he shall not issue any certificate to such witnesses. The docket shall be kept duly indexed. Such docket may be kept on computer as provided in Section 9-7-171.

HISTORY: Codes, 1857, ch. 61, art. 22; 1871, § 561; 1880, § 1488; 1892, § 638; 1906, § 695; Hemingway's 1917, § 474; 1930, § 483; 1942, § 1421; Laws, 1994, ch. 521, § 25; Laws, 1994, ch. 458, § 4, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. In general.

Prevailing party held not entitled to recover witness fees where certificate of allowance was not issued by clerk or demanded by witness during term of court or within five days thereafter notwithstanding witness made proper affidavit before clerk. Woodruff v. Bright, 175 Miss. 109, 166 So. 390, 1936 Miss. LEXIS 24 (Miss. 1936).

OPINIONS OF THE ATTORNEY GENERAL

Since inclusion of second sentence of Rule 45(a), clerk is relieved of burden of including any information on “hip-pocket” subpoenas, except signature and seal. Teel, July 2, 1992, A.G. Op. #92-0422.

RESEARCH REFERENCES

ALR.
Impeachment of witness with respect to intoxication. 8 A.L.R.3d 749.

Am. Jur.
20 Am. Jur. 2d (Rev), Courts § 23 et seq.

CJS.
21 C.J.S., Courts §§ 246 et seq.

§ 9-7-181. Execution docket.

The clerk shall keep a docket, in which he shall enter every capias pro finem and all executions issued by him, specifying the names of the parties, the date, the amount of the judgment or decree and of costs, the name of the officer to whom it is delivered, to what county directed, the date when issued, and the return-day thereof; and, when the same is returned, shall, without delay, record the return at large on the same page of the docket. And the execution docket shall be kept duly indexed, both directly and indirectly, in the alphabetical order of the names of each of the parties. Such docket may be kept on computer as provided in Section 9-7-171.

HISTORY: Codes, 1857, ch. 61, art. 268; 1871, § 565; 1880, § 1489; 1892, § 639; 1906, § 696; Hemingway's 1917, § 475; 1930, § 484; 1942, § 1422; Laws, 1994, ch. 521, § 26; Laws, 1994, ch. 458, § 5, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

CJS.
21 C.J.S., Courts §§ 246 et seq.

CIRCUIT COURT COMMUNITY CORRECTIONS ACT OF 2010

Sec.
9-7-201. Repealed.

§ 9-7-201. Repealed.

Repealed by its own term, effective July 1, 2013.

§ 9-7-201. [Laws, 2010, ch. 544, § 1, eff from and after passage (approved Apr. 28, 2010.)]

Editor's Notes — Former § 9-7-201 authorized the Circuit Court Community Corrections Program pilot program.

CHAPTER 9.

COUNTY COURTS

Sec.
9-9-1. Continuation and establishment in certain counties.
9-9-3. Establishment by agreement between two or more counties; expenses of operating court to be prorated.
9-9-5. County judge; qualifications, election, term of office, and filling of vacancies.
9-9-7. Repealed.
9-9-9. County judge; general restriction on practice of law.
9-9-11. County judge; compensation and further restrictions.
9-9-13. Municipalities may supplement salaries of county judicial officers surrendering right to practice law.
9-9-14. Additional judge for Harrison County.
9-9-15. Additional judges for Hinds County.
9-9-16. Additional judge for Washington County.
9-9-17. Additional judge for Jackson County.
9-9-18. Additional county court judge for Rankin County.
9-9-18.1. Additional county court judge for Madison County.
9-9-18.2. County court judge for Pearl River County.
9-9-18.3. Additional county court judges for Lauderdale County.
9-9-18.5. Additional county court judge for DeSoto County.
9-9-18.6. Additional county court judge for Lee County.
9-9-19. Term of court fixed.
9-9-21. Jurisdiction.
9-9-23. Powers of county judge.
9-9-25. Repealed.
9-9-27. Transfer of cases; prosecution by affidavit.
9-9-29. Court of record; duties of circuit clerk and sheriff; fees.
9-9-31. Duties of prosecuting attorney.
9-9-33. Repealed.
9-9-35. Circuit judges authorized to assign cases and other court duties to county judges where dockets overcrowded.
9-9-36. Chancellors authorized to assign cases and other court duties to county judges where dockets overcrowded.
9-9-37. Certain counties may establish or abolish court.
9-9-39. Effect of abolition of county court; pending matters transferred.
9-9-41. Court may be abolished in certain counties.
9-9-43. Legislative action or election required to abolish courts in certain counties.
9-9-45. When other counties become eligible for establishment or abolition of court.

§ 9-9-1. Continuation and establishment in certain counties.

(1) There shall be an inferior court to be known as the county court in and for each of the following counties:

(a) Each county of the state wherein a county court is in existence on July 1, 1985;

(b) From and after January 1, 1987, each county that has a population exceeding fifty thousand (50,000) inhabitants as shown by the latest federal decennial census; and

(c) The board of supervisors of any county having a population exceeding thirty-nine thousand (39,000) inhabitants as shown by the latest federal decennial census in which Highways 589 and 98 intersect shall have the option to establish a county court under the provisions of this section.

(2)(a) A county judge for a county that is required to establish a county court under subsection (1)(b) of this section shall be elected by the qualified electors of the county in the same manner as provided for the election of circuit court judges at an election held at the same time as the next regular election of circuit court judges first occurring after the date upon which it can be determined that a county court is required under the provisions of subsection (1)(b) of this section to be established in such county.

(b) A county judge for a county electing to establish a county court under subsection (1)(c) of this section shall be elected by the qualified electors of the county in the same manner as provided for the election of circuit court judges at an election held at the November general election first occurring after the date when the board of supervisors spreads upon its minutes a resolution creating the county court. The term of the county court judge so elected shall begin on the first day of January following the November election, and shall end at the same time as for county court judges generally. Thereafter, the county court judge shall be elected and serve for a term as provided for county court judges generally.

(3) The provisions of this section shall not be construed so as to require that a county court be established in any county in which the board of supervisors has agreed and contracted with the board of supervisors of any other county or counties to support and maintain one (1) county court for such counties as provided in Section 9-9-3.

HISTORY: Codes, 1930, § 693; 1942 § 1604; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, ch. 247; Laws, 1948, ch. 236; Laws, 1950, ch. 321; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, ch. 344, § 1; Laws, 1968, ch. 311, § 1; Laws, 1970, ch. 335, § 1; Laws, 1974, ch. 477, § 1; Laws, 1979, ch. 457, § 1; Laws, 1985, ch. 502, § 60; Laws, 2002, ch. 356, § 3; Laws, 2007, ch. 318, § 1; brought forward without change, Laws, 2010, ch. 442, § 2, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the bringing forward without change of this section).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation deleted the words "for the same term and" preceding "in the same manner" in (2)(a). The words were added by a 2002 bill that was contingent upon ratification of a constitutional amendment which failed. The words were mistakenly left in the code and included in Laws of 2017, ch. 318, § 1. The Joint Committee ratified the correction at its August 15, 2017, meeting.

Editor's Notes — Laws of 2002, ch. 713 (Senate Concurrent Resolution No. 543), provides in pertinent part:

"BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the following amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state:

"Amend Section 153, Mississippi Constitution of 1890, to read as follows:

"'Section 153. The judges of the circuit and chancery courts shall be elected by the people in a manner and at a time to be provided by the Legislature. The judges elected for a term of office beginning from and after January 1, 2003, shall hold their office for a term of six (6) years.'

"BE IT FURTHER RESOLVED, That this proposed amendment shall be submitted by the Secretary of State to the qualified electors at an election to be held on the first Tuesday after the first Monday of November 2002, as provided by Section 273 of the Constitution and by general law.

"BE IT FURTHER RESOLVED, That the explanation of this proposed amendment for the ballot shall read as follows: 'This proposed constitutional amendment increases the terms of office of circuit and chancery court judges from four to six years beginning January 1, 2003.'

"BE IT FURTHER RESOLVED, That the Attorney General of the State of Mississippi shall submit this resolution, immediately upon adoption by the Legislature, to the Attorney General of the United States or to the United States District Court for the District of Columbia, in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

On June 25, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendments to this section by Laws of 2007, ch. 318, § 1.

By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the bringing forward without change of this section by Laws of 2010, ch. 442.

Cross References — Civil practice and procedure provisions common to courts, see § 11-1-1 et seq.

Civil practice and procedure generally in county courts, see §§ 11-9-1 et seq.

Jurisdiction of county courts in paternity cases, see § 93-9-15.

Rules governing practice and procedure in county courts, see Miss. Uniform Rules of Circuit and County Court Practice 1.01 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction in general.
3. Jurisdictional amount.
4. Jurisdiction in vacation.
5. Exclusive jurisdiction.
6. Criminal jurisdiction.

1. In general.

Chapter 17 of the Code of 1930, pertaining to county courts, is not a repeal but a re-enactment of the applicable provisions of the Act of 1926. Quitman County v. Turner, 196 Miss. 746, 18 So. 2d 122, 1944 Miss. LEXIS 254 (Miss. 1944).

One of the purposes in the establishment of county courts was to provide a judicial officer possessing all the qualifications of a circuit judge or chancellor, who would be available at all times for service in habeas corpus cases and to furnish a speedy remedy in habeas corpus. Cole v. Cole, 194 Miss. 292, 12 So. 2d 425, 1943 Miss. LEXIS 71 (Miss. 1943).

County Court Act did not repeal entire eminent domain chapter, but both must be construed together, and all provisions of each not repugnant to provisions of other must stand and in case of repugnancy county court chapter controls. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

Statute creating county courts in certain counties held not local or special law, when interpreted as authorizing governor to determine population of counties automatically coming under act. State ex rel. Knox v. Speakes, 144 Miss. 125, 109 So. 129, 1926 Miss. LEXIS 339 (Miss. 1926).

2. Jurisdiction in general.

Where timely objection was not made, as specifically required by Code 1942 § 1433, venue was waived. Wofford v. Cities Service Oil Co., 236 So. 2d 743, 1970 Miss. LEXIS 1499 (Miss. 1970).

Supreme Court, circuit courts, chancery courts and county courts, when acting on appeal from a special possessory court of a justice of the peace, have only such jurisdiction to adjudicate regarding title to land as is vested in special court from which appeal was taken. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Original jurisdiction to make conclusive and final adjudication of title to land rests alone with circuit and chancery courts, and to a limited extent with the county courts. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

County court has jurisdiction under this section of ejectment action to recover possession of land whose value does not exceed $1,000. Allen v. Gibson, 198 Miss. 23, 20 So. 2d 479, 1945 Miss. LEXIS 164 (Miss. 1945).

Jurisdiction of county court is not confined to particular justice district, but is concurrent with jurisdiction of all justices of county. Webb v. State, 158 Miss. 715, 131 So. 262, 1930 Miss. LEXIS 108 (Miss. 1930).

County court had no jurisdiction of suit by school patron to restrain further employment of alleged incompetent driver of school truck, county court having no jurisdiction in equity for maintenance of civil rights. Welch v. Bryant, 157 Miss. 559, 128 So. 734, 1930 Miss. LEXIS 331 (Miss. 1930).

Chancellor ordering issuance of writ of injunction could not transfer case to county court for hearing on whether injunction should be made perpetual. Welch v. Bryant, 157 Miss. 559, 128 So. 734, 1930 Miss. LEXIS 331 (Miss. 1930).

3. Jurisdictional amount.

County court had jurisdiction of proceeding for partition of land held by tenants in common in which original bill alleged that value of lots sought to be partitioned at time of filing of bill would not exceed $1000 and final decree of county court adjudicated truth of this fact and found that value of land had increased since time of filing of bill because of discovery of oil nearby and lots brought $1,200 at sale, since jurisdiction having been acquired by original bill it was not defeated by subsequent events. Barnes v. Rogers, 206 Miss. 887, 41 So. 2d 58, 1949 Miss. LEXIS 311 (Miss. 1949).

Jurisdiction of a court is determined by amount in controversy at time when court is first called on to exercise jurisdiction, which, in trial court, is amount claimed at time when suit is filed, and jurisdiction once acquired is not defeated by subsequent events, even though they are of such character as would have prevented jurisdiction from attaching in first instance. Barnes v. Rogers, 206 Miss. 887, 41 So. 2d 58, 1949 Miss. LEXIS 311 (Miss. 1949).

County court is court of general jurisdiction although limited in amount of its jurisdiction. Barnes v. Rogers, 206 Miss. 887, 41 So. 2d 58, 1949 Miss. LEXIS 311 (Miss. 1949).

A county court had no jurisdiction of a replevin action involving life insurance policies, the value of which was given in the affidavit as totaling $100 but which actually had a cash surrender value in excess of $1000. Van Norman v. Van Norman, 203 Miss. 310, 34 So. 2d 733, 1948 Miss. LEXIS 270 (Miss. 1948).

A judgment of the trial court sustaining a demurrer to an action to enforce a money reserve title contract, based on the claim that the amount sued for exceeded the jurisdictional amount and that the plaintiff failed to demand possession of the chattel before bringing suit, was not on the merits, and so the defense of res judicata was not available in a second action, in which the sum sued for was within the jurisdictional amount. Grant v. Dotson, 193 Miss. 577, 10 So. 2d 680, 1942 Miss. LEXIS 155 (Miss. 1942).

4. Jurisdiction in vacation.

However, as to eminent domain cases, statute (Laws 1936, ch. 247) now confers on county judge in vacation jurisdiction county court had in term time. State Highway Com. v. Day, 181 Miss. 708, 180 So. 794, 1938 Miss. LEXIS 111 (Miss. 1938).

County court is unauthorized to try causes in vacation; hence trial and judgment during vacation were void. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

Failure to object to trial of eminent domain proceeding before county court in vacation did not confer jurisdiction on county court by consent. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

5. Exclusive jurisdiction.

Exclusive jurisdiction of an unlawful entry detainer case is now vested in the county court by reason of this section. Gardner v. Cook, 173 Miss. 244, 158 So. 150, 1934 Miss. LEXIS 389 (Miss. 1934).

The effect of this section is to abolish special eminent domain courts (see Code 1942, § 2750) in counties having county courts, and to vest the jurisdiction thereof in the county court. City of Hattiesburg v. Pritchett, 160 Miss. 342, 134 So. 140, 1931 Miss. LEXIS 181 (Miss. 1931).

6. Criminal jurisdiction.

Jurisdiction of county court in misdemeanor case is co-extensive with boundary of county wherein offense was committed, and venue of crime is in that county. Webb v. State, 158 Miss. 715, 131 So. 262, 1930 Miss. LEXIS 108 (Miss. 1930).

To confer jurisdiction on county court in misdemeanor case, State need only allege and prove crime was committed in county. Webb v. State, 158 Miss. 715, 131 So. 262, 1930 Miss. LEXIS 108 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Place of holding sessions of trial court as affecting validity of its proceedings. 18 A.L.R.3d 572.

Power of court to impose standard of personal appearance or attire. 73 A.L.R.3d 353.

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 8 et seq.

CJS.

21 C.J.S., Courts §§ 121 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 9-9-3. Establishment by agreement between two or more counties; expenses of operating court to be prorated.

Any two (2) or more counties in the discretion of their respective boards of supervisors may contract and agree between themselves to support and maintain one (1) county court for such counties. If such agreement be made then the expenses of the operation of said court shall be prorated among such two (2) or more counties and the pro rata part of each county shall be paid from the general funds of each county, from any special tax which may be levied for the support of such court, or any funds made available to the county from the Federal Law Enforcement Assistance Administration for this purpose.

HISTORY: Codes, 1930, § 693; 1942, § 1604; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, ch. 247; Laws, 1948, ch. 236; Laws, 1950, ch. 321; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, ch. 344, § 1; Laws, 1968, ch. 311, § 1; Laws, 1970, ch. 335, § 1; Laws, 1974, ch. 338, eff from and after passage (approved March 11, 1974).

Cross References — Relationship between this section and general requirements with respect to the establishment of county courts, see § 9-9-1.

County courts in counties not brought within the provisions of this chapter by the terms of this section or § 9-9-1, see § 9-9-37.

RESEARCH REFERENCES

ALR.

Place of holding sessions of trial court as affecting validity of its proceedings. 18 A.L.R.3d 572.

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 9-9-5. County judge; qualifications, election, term of office, and filling of vacancies.

(1) The county judge shall possess all of the qualifications of a circuit judge as prescribed by the Mississippi Constitution. In the event of the establishment of a county court by agreement between two (2) or more counties as provided in Section 9-9-3, the judge of said court may be a qualified elector of any one (1) of said counties, and shall have such other qualifications as provided for by law. The county judge shall be elected by the qualified electors of his county at the time and in the manner as circuit judges are elected and he shall hold office for the same term. Vacancies in the office of county judge shall be filled in the same manner as vacancies in the office of circuit judge.

(2) Provided, however, that in any county having a total population in excess of eleven thousand (11,000) according to the 1970 federal decennial census and a total assessed valuation of real and personal property of not less than sixteen million dollars ($16,000,000.00) and not more than seventeen million dollars ($17,000,000.00) and in which Mississippi Highway 4 and United States Highway 61 intersect, in which there is a vacancy in the post of county judge resulting from the failure of a candidate to qualify for that post, the board of supervisors of such county may, upon certification of such vacancy to the board, appoint a county judge to serve out the term so vacated who shall be a licensed attorney from such county or an adjoining county. The compensation of such attorney shall be the same he would have otherwise received if elected.

(3) In the event that any county wherein is located a state hospital and wherein U.S. Highway 80 and Mississippi Highway 43 intersect shall establish a county court, the county judge of such county shall be elected at the general election to be held on Tuesday after the first Monday of November, 1982, after qualifying therefor as provided by law. Provided, however, that the board of supervisors of such county may appoint a county judge who shall be a licensed attorney from such county until the office of county judge shall be filled pursuant to said election.

HISTORY: Codes, 1930, §§ 693, 697; 1942, §§ 1604, 1608; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, chs. 247, 254; Laws, 1946, ch. 370; Laws, 1948, ch. 236; Laws, 1950, chs. 251, 321; Laws, 1952, ch. 238; Laws, 1954, ch. 230; Laws, 1954 Ex Sess ch. 15; Laws, 1955 Ex. ch. 39, § 1; Laws, 1956, ch. 231, §§ 1, 2; Laws, 1960, ch. 234; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, chs. 344, § 1, 345, § 1; Laws, 1968, ch. 311, §§ 1, 2; Laws, 1970, chs. 335, § 1, 402, § 4; Laws, 1971, ch. 495, § 1; Laws, 1975, ch. 399; Laws, 1982, ch. 476, § 2, eff from and after passage (approved April 22, 1982).

Cross References — Qualifications of circuit judge, see Miss. Const. Art. 6, § 154.

Prohibition against judge having interest in cause or being related to parties sitting in cases, see § 9-1-11.

RESEARCH REFERENCES

ALR.

Place of holding sessions of trial court as affecting validity of its proceedings. 18 A.L.R.3d 572.

Am. Jur.

46 Am. Jur. 2d (Rev), Judges §§ 7, 11, 61, 62.

CJS.

48A C.J.S., Judges §§ 23, 24.

Law Reviews.

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 9-9-7. Repealed.

Repealed by Laws, 1994, ch 564, § 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

§ 9-9-7. [Codes, 1930, § 708; 1942, § 1623; Laws, 1926, ch. 131]

Editor's Notes — The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, § 66.

Former § 9-9-7 was entitled: Primary elections, county judges nominated.

§ 9-9-9. County judge; general restriction on practice of law.

The county judge shall not practice law in any of the courts of the county wherein he holds court, but this prohibition shall not prohibit the judges of the county courts from practicing in any of the courts so far as to enable them to bring to a conclusion cases actually pending when they were appointed or elected, in which such county judges were then employed as provided in Section 9-1-25, Mississippi Code of 1972, for judges of the circuit court and chancellors.

HISTORY: Codes, 1930, § 697; 1942, § 1608; Laws, 1926, ch. 131; Laws, 1936, ch. 254; Laws, 1946, ch. 370; Laws, 1950, ch. 251; Laws, 1952, ch. 238; Laws, 1954, ch. 230; Laws, 1954 Ex Sess ch. 15; Laws, 1955 Ex. ch. 39, § 1; Laws, 1956, ch. 231, §§ 1, 2; Laws, 1960, ch. 234; Laws, 1966, ch. 345, § 1; Laws, 1968, ch. 311, § 2; Laws, 1970, ch. 402, § 4, eff from and after passage (approved April 3, 1970).

Cross References — Prohibition against practice of law by Supreme Court judges, circuit judges and chancellors, see § 9-1-25.

JUDICIAL DECISIONS

1. Discipline.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 1; the Supreme

Court of Mississippi suspended him for 180 days without compensation. The judge had a pattern of misconduct, as he had been disciplined in the past for practicing law as a judge in violation of Miss. Code Ann. §§ 9-1-25, 9-9-9. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314, 2008 Miss. LEXIS 69 (Miss. 2008).

Where a county judge had not willfully abused the privilege of filing new complaints while in office, the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324, 2004 Miss. LEXIS 780 (Miss. 2004).

OPINIONS OF THE ATTORNEY GENERAL

Serving as a family master does not amount to the practice of law as contemplated by this section and Section 9-9-11. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

A county court judge may be appointed as a family master and receive additional compensation from the county under Section 9-5-255(4) beyond the compensation that is received for being a county court judge. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

RESEARCH REFERENCES

Law Reviews.

1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 9-9-11. County judge; compensation and further restrictions.

(1) Except as otherwise provided in subsections (2), (3) and (4), the county court judge shall receive an annual salary payable monthly out of the county treasury in an amount not to exceed One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state, in the discretion of the board of supervisors of said county; provided, however, that the salary of such judge shall not be reduced during his term of office. Provided further, that the office of county court judge in any county receiving an annual salary of Thirty-six Thousand Dollars ($36,000.00) or more shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(2) If a county court is established by agreement between two (2) or more counties as provided in Section 9-9-3, the county judge of the court so established shall be paid a salary equal to one and one-half (1-½) times that salary that he would be paid if he were the judge of the smallest of such two (2) or more counties, such salary to be paid in monthly installments as provided by law; provided that such salary shall not exceed One Thousand Dollars ($1,000.00) less than the salary of the circuit and chancery judges of this state.

(3) The county court judge shall receive an annual salary payable monthly out of the county treasury as follows:

(a) In any county having a population of seventy thousand (70,000) or more according to the 1980 federal census, the county judge shall receive an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(b) In any county having a population of sixty thousand (60,000) or more but less than seventy thousand (70,000) according to the 1980 federal census, the county judge shall receive an annual salary of Forty Thousand Dollars ($40,000.00). The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4).

(c) In any county having a population of twenty-seven thousand (27,000) or more but less than sixty thousand (60,000) according to the 1980 federal census, the county judge shall receive an annual salary of not less than Twelve Thousand Dollars ($12,000.00) but not more than Forty Thousand Dollars ($40,000.00), in the discretion of the board of supervisors of said county. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4). In the event that the board of supervisors of said county elects to pay such county judge an annual salary of Thirty Thousand Dollars ($30,000.00) or more, the office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(d) In any county having a population of less than twenty-seven thousand (27,000) according to the 1980 federal census, the county judge shall receive an annual salary of not less than Four Thousand Two Hundred Dollars ($4,200.00) and not more than Eight Thousand Five Hundred Dollars ($8,500.00), in the discretion of the board of supervisors of said county. The county judge shall not be eligible for any additional salary except as may be authorized in subsection (4).

(4) The county judge of any county described in this subsection shall be paid the compensation, and he shall be subject to any restrictions set forth in the following paragraphs:

(a) The county judge of any such Class 1 county with a population according to the latest federal decennial census of forty-five thousand (45,000) or more and lying wholly within a levee district and having two (2) judicial districts shall, in the discretion of the board of supervisors of such county, receive an annual salary not exceeding Forty Thousand Dollars ($40,000.00), or a sum which is One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of the state, whichever is greater.

(b) The county judge of any Class 1 county having an area in excess of nine hundred twenty-five (925) square miles shall receive an annual salary of not less than Thirty Thousand Dollars ($30,000.00) but, in the discretion of the board of supervisors of such county, such salary may be not more than Five Hundred Dollars ($500.00) less than the annual salary of a circuit judge, payable monthly out of the county treasury, and the county judge shall not practice law.

(c) The office of county judge in any such Class 1 county with a population according to the 1970 federal decennial census of greater than thirty-nine thousand (39,000), and where U.S. Highway 61 and Mississippi

Highway 6 intersect, shall receive an annual salary to be paid in monthly installments of not less than an amount equal to ninety percent (90%) of the annual salary which is now or shall hereafter be provided for circuit and chancery judges of the state, as follows: The salary of the county judge shall be increased by ten percent (10%) annually above the base salary of the preceding year until such time as the judge's salary is equal to the amount that is provided by this subsection. The office of county judge shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law.

(d) In any Class 1 county bordering on the Mississippi River and which has situated therein a national military park and national military cemetery, the office of county judge shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law. The salary for the county judge in said county shall be fixed at a sum which is One Thousand Dollars ($1,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state.

(e) The county judge in any county having a population of at least forty-two thousand one hundred eleven (42,111), according to the 1970 census, and where U.S. Highway 49E and U.S. Highway 82 intersect, shall receive an annual salary to be paid in monthly installments of not less than Thirty Thousand Dollars ($30,000.00) but not more than Two Thousand Five Hundred Dollars ($2,500.00) less than the annual salary of the circuit judge, in the discretion of the board of supervisors of said county.

(f) The county judge in any Class 1 county bordering on the Mississippi River and having an area of less than four hundred fifty (450) square miles wherein U.S. Highways 84 and 61 intersect shall receive an annual salary of Four Thousand Dollars ($4,000.00) less than the annual salary of a circuit judge, and such county judge shall not practice law in any manner. The county judge in such county shall not be eligible to receive any additional salary authorized by this section or from any other source other than that set out and authorized by this paragraph.

(g) The county judge of any Class 1 county bordering on the Mississippi River on the west and the State of Tennessee on the north, and traversed north to south by Interstate Highway 55, shall receive an annual salary of ninety percent (90%) of the salary which is now or shall hereafter be provided for chancery and circuit judges of this state, but in any event not less than Sixty Thousand Two Hundred Dollars ($60,200.00).

(h) The county judge of any Class 1 county with a population of greater than sixty-nine thousand (69,000) according to the 1980 federal decennial census, and wherein U.S. Highway 80 and Mississippi Highway 43 intersect, shall receive an annual salary in an amount not greater than the sum of Five Hundred Dollars ($500.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state, in the discretion of the board of supervisors of said county.

(i) The county judge of any county having a population in excess of sixty-six thousand (66,000) according to the 1980 federal decennial census, wherein is located a state-supported university and in which U.S. Highways 49 and 11 intersect, shall receive an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of such county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(j) The county judge of any county having two (2) judicial districts, having a population in excess of sixty-one thousand nine hundred (61,900) according to the 1980 federal decennial census, in which U.S. Interstate Highway 59 intersects with U.S. Highway 84, shall receive an annual salary of One Thousand Dollars ($1,000.00) less than the salary which is now or hereafter authorized to be paid circuit and chancery court judges of this state. The office of such county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(k) The office of county judge of any Class I county wherein U.S. Highway 51 and U.S. Highway 98 intersect shall be a full-time position and the holder thereof shall not otherwise engage in the practice of law. The annual salary for the office of county judge in said county may be fixed, in the discretion of the board of supervisors of said county, at a sum not to exceed Two Thousand Dollars ($2,000.00) less than the salary which is now or shall hereafter be provided for circuit and chancery judges of this state.

(*l*) The county judge of any county having a population of more than forty-one thousand six hundred (41,600) but less than forty-one thousand six hundred fifty (41,650) according to the 1980 federal census, and wherein U.S. Highway 49 intersects with Mississippi Highway 22, shall receive an annual salary payable monthly out of the county treasury of One Thousand Dollars ($1,000.00) less than the salary provided now or hereafter for circuit and chancery judges of this state.

(m) The county judge of any county having a population of more than fifty-seven thousand (57,000) but less than fifty-seven thousand one hundred (57,100) according to the 1980 federal census, wherein U.S. Highway 45 intersects with Mississippi Highway 6, shall receive an annual salary in an amount established by the board of supervisors, but in no event to exceed the salary provided now or hereafter for circuit and chancery judges of this state.

(n) The county judge of any county having a population of more than fifty-seven thousand three hundred (57,300) according to the 1980 federal decennial census, wherein is located a state-supported university and wherein U.S. Highways 82 and 45 intersect, shall receive an annual salary in an amount established by the board of supervisors, but in no event to exceed the salary provided now or hereafter for circuit and chancery judges of this state.

(5) The salary of a county court judge or justice court judge shall not be reduced during his term of office as a result of a population decrease based upon the 1990 federal decennial census.

(6) The salary of a sheriff shall not be reduced during his term of office as a result of a population decrease based upon the 1990 federal decennial census.

(7) Notwithstanding any provision of this section to the contrary, the board of supervisors of any county, in its discretion, may pay its county court

judge an annual salary of One Thousand Dollars ($1,000.00) less than that paid to a circuit court judge. The office of county judge shall be a full-time position, and the holder thereof shall not otherwise engage in the practice of law.

(8)(a) There shall be transferred to the county for each county court judge, payment to be made in monthly installments from the Judicial System Operation Fund created under Section 9-21-45, an annual salary supplement of:

(i) From and after January 1, 2013, through December 31, 2013, the sum of Seven Thousand Nine Hundred Fifty-seven Dollars and Fifty Cents ($7,957.50), plus any applicable fringe benefits resulting from this amount;

(ii) From and after January 1, 2014, through December 31, 2014, the sum of Fifteen Thousand Nine Hundred Fifteen Dollars ($15,915.00), plus any applicable fringe benefits resulting from this amount;

(iii) From and after January 1, 2015, through December 31, 2015, the sum of Twenty-three Thousand Eight Hundred Seventy-two Dollars and Fifty Cents ($23,872.50), plus any applicable fringe benefits resulting from this amount; and

(iv) From and after January 1, 2016, through December 31, 2019, the sum of Thirty-one Thousand Eight Hundred Thirty Dollars ($31,830.00), plus any applicable fringe benefits resulting from this amount.

(b) From and after January 1, 2019, and every four (4) years thereafter, the annual salary in this subsection (8) shall be adjusted according to the level of compensation recommended by the State Personnel Board for county court judges in the board's most recent report on judicial salaries, as required under Section 25-9-115, to the extent that sufficient funds are available.

(c) The total annual salary paid to the county court judge out of the county treasury and out of the Judicial System Operation Fund created under Section 9-21-45 shall not exceed the salary limitation set forth in subsection (7) of this section.

HISTORY: Codes, 1930, §§ 693, 697; 1942, §§ 1604, 1608; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, chs. 247, 254; Laws, 1946, ch. 370; Laws, 1948, ch. 236; Laws, 1950, chs. 251, 321; Laws, 1952, ch. 238; Laws, 1954, ch. 230; Laws, 1954 Ex Sess ch. 15; Laws, 1955 Ex. ch. 39, § 1; Laws, 1956, ch. 231, §§ 1, 2; Laws, 1960, ch. 234; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, chs. 344, § 1, 345, § 1; Laws, 1968, ch. 311, §§ 1, 2; Laws, 1970, chs. 335, § 1, 402, § 4; Laws, 1971, ch. 495, § 1; Laws, 1973, ch. 486, § 1; Laws, 1975, ch. 461; Laws, 1978, ch. 504, § 1; Laws, 1979, ch. 457, § 2; Laws, 1980, ch. 558; Laws, 1982, ch. 476, § 1; Laws, 1985, ch. 526; Laws, 1986, ch. 463; Laws, 1988, ch. 508; Laws, 1989, ch. 323, § 1; Laws, 1991, ch. 559 § 1; Laws, 1993, ch. 550, § 1; Laws, 2004, ch. 334, § 1; Laws, 2006, ch. 376, § 1; Laws, 2012, ch. 329, § 8, eff January 1, 2013 (the later of the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, or January 1, 2013).

Editor's Notes — Laws of 1991, ch. 559, § 2, effective from and after passage (approved April 12, 1991), provides as follows:

"SECTION 2. This act shall take effect and be in force from and after its passage; however, the amendment under Section 1 of this act to Section 9-9-11(4)(g) and new paragraph (4)(n) of Section 9-9-11 shall take effect and be in force from and after October 1, 1991."

The United States Attorney General, by letter dated May 27, 1993, interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1993, ch. 550, § 1.

By letter dated August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2004, ch. 334, § 1.

On June 28, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 376, § 1.

Laws of 2012, ch. 329, § 11 provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

By letter dated August 24, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 329, Laws of 2012.

Cross References — Salary of judge of county court established by agreement between two or more counties as provided in this section, see § 9-9-11.

Applicability of this section to county judges in counties which have come under the provisions of this chapter by an election, see § 9-9-37.

JUDICIAL DECISIONS

1. In general.

The salary provision in this section [Code 1942 § 1608] for county judge applies only to the larger counties automatically established by the Act of 1926, and the sliding-scale provision of Code 1942 § 1618 applies to the smaller counties which elected to establish county courts under the enabling provisions of the Act of 1926, so that the annual salary for judge of Quitman County Court, established by the people under the enabling provisions of the Act of 1926 at a salary of $2,000, continued to remain at $2,000 after the adoption of the 1930 Code since that county fell in that category under Code 1942 § 1618, in view of the fact that § 697 of 1930 Code merely carried over the automatic provision of the Act of 1926, whereas § 706, Code 1930 (Code 1942 § 1618) carried over the enabling provisions of the Act of 1926. Quitman County v. Turner, 196 Miss. 746, 18 So. 2d 122, 1944 Miss. LEXIS 254 (Miss. 1944).

OPINIONS OF THE ATTORNEY GENERAL

Serving as a family master does not amount to the practice of law as contemplated by Section 9-9-9 and this section. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

A county court judge may be appointed as a family master and receive additional compensation from the county under Section 9-5-255(4) beyond the compensation that is received for being a county court judge. Griffith, Dec. 6, 2002, A.G. Op. #02-0689.

RESEARCH REFERENCES

ALR.
Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 A.L.R.4th 700.

Am. Jur.
46 Am. Jur. 2d (Rev), Judges §§ 56 et seq.

CJS.
48A C.J.S., Judges §§ 189 et seq.

Law Reviews.
1979 Mississippi Supreme Court Review: Civil Procedure. 50 Miss. L. J. 719, December 1979.

§ 9-9-13. Municipalities may supplement salaries of county judicial officers surrendering right to practice law.

The governing body of any municipality with a population in excess of one hundred thousand (100,000) persons, upon determination that municipal security or efficiency is involved in the judicial process in the handling of appeals from municipal court and of related matters, may contract to supplement the salary of county judicial officers in the county in which such municipality is located in exchange for the surrender by such judicial officers of the right to engage in the practice of law. The salary of such judicial officer so supplemented shall not exceed the salary of circuit or chancery judges in such county or of municipal councilmen, whichever is less.

HISTORY: Codes, 1942, § 1608.5; Laws, 1964, ch. 503, eff from and after passage (approved June 11, 1964).

§ 9-9-14. Additional judge for Harrison County.

(1) In order to relieve the crowded condition of the docket in the county court of Harrison County and particularly to facilitate and make possible the trial and disposition of the large number of causes on said docket, there shall be three (3) county judges for Harrison County provided for and elected as herein set out.

(2) For the purposes of nomination and election, the three (3) judgeships shall be separate and distinct, to be denominated for purposes of appointment, nomination and election only as "place one," "place two" and "place three." There shall be no distinction whatsoever in the powers, duties and emoluments of the three (3) offices of county judge, except that the county judge of Harrison County who has been for the longest time continuously a county judge of said county shall have the power to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the said county judges other than as cast upon them by the constitution and laws of this state, the county court of Harrison County may, in the discretion of the county judge who has been for the longest time continuously a judge of said court, be divided into civil, equity and criminal divisions as a matter of convenience, by the entry of an order upon the minutes of the court.

(4) The Governor shall appoint some qualified person from Harrison County to fill the office of county judge hereby created, who shall hold office

until his successor is elected and qualified in the manner and form as provided in Section 9-9-5, Mississippi Code of 1972, and said appointment and election shall in all respects be of the same import as if the office had heretofore been in existence and a vacancy had as of October 1, 1972, occurred therein.

(5) Each county judge shall appoint his own court reporter in accordance with Section 9-13-61, Mississippi Code of 1972, for the purpose of doing the necessary stenographic work of the court.

(6) The family court judge in Harrison County shall be the county judge for "place three" from and after March 19, 1999, to serve for the term expiring December 31, 2002.

HISTORY: Codes, 1942, § 1604.9; Laws, 1972, ch. 348, § 1; Laws, 1999, ch. 432, § 3, eff from and after May 28, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — By letter dated May 28, 1999, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1999, ch. 432, § 3.

§ 9-9-15. Additional judges for Hinds County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of the first judicial district of Hinds County and particularly to facilitate and make possible the trial and disposition of the large number of causes on said docket and in the youth court, there shall be three (3) county judges for Hinds County, Mississippi, provided for and elected as herein set out.

(2) For purposes of appointment, nomination and election, the three (3) judgeships shall be separate and distinct, the presently existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as Place One, Place Two and Place Three. There shall be no distinction whatsoever in the powers, duties and emoluments of the three (3) offices of county judge, except that the county judge of Hinds County who has been for the longest time continuously a county judge of said county, shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the said county judges other than as cast upon them by the constitution and laws of this state, the county court in Hinds County may, in the discretion of the county judge who has been for the longest time continuously a judge of said court, be divided into civil, criminal and youth court divisions as a matter of convenience, by the entry of an order upon the minutes of the court.

HISTORY: Codes, 1942, § 1604.5; Laws, 1958, ch. 231, §§ 1-4; Laws, 1971, ch. 364, § 1, eff from and after passage (approved March 15, 1971).

§ 9-9-16. Additional judge for Washington County.

(1) In order to relieve the crowded condition of the docket in the county

court of Washington County and particularly to facilitate and make possible the trial and disposition of the large number of causes on said docket, it is enacted that from and after January 1, 1976, in the manner provided herein, there shall be two (2) county judges for Washington County, Mississippi, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the presently existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as "place one" and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as "place two." There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of Washington County who has been for the longest time continuously a county judge of said county shall have the power to assign causes, terms and dockets. Should neither judge of said county court have served longer in said office than the other, then that judge of this county court who has been for the longest time a member of the Mississippi State Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the said county judges other than as cast upon them by the constitution and laws of this state, the county court of Washington County may, in the discretion of the county judge who has been for the longest time continuously a judge of said court, be divided into civil, equity, youth and criminal divisions as a matter of convenience, by the entry of an order upon the minutes of the court.

(4) Each county judge shall appoint his own court reporter in accordance with Section 9-13-61, Mississippi Code of 1972, for the purpose of doing the necessary stenographic work of the court.

(5) The additional judgeship created by this section shall remain vacant unless prior to May 10, 1975, the board of supervisors of Washington County, Mississippi, shall adopt an order duly entered upon the minutes of said board stating that sufficient county funds are available for the compensation and related expenses of the additional judgeship created herein.

(6) If the order of the board of supervisors as required under subsection (5) of this section shall have been duly adopted and entered upon the minutes of said board prior to May 10, 1975, then the additional judgeship herein created shall be filled by a person elected in the regular primary and general elections to be held in 1975, and the person so elected shall hold office from January 1, 1976, for the remainder of the regular term for county judges. All candidates for such office shall possess all of the qualifications of a circuit judge as prescribed by the state constitution and shall qualify for election in the same manner and be governed by the same statutes as other candidates for county office. After the first election to fill the judgeship created herein, the provisions of Section 9-9-5, Mississippi Code of 1972, shall apply to the judgeship created herein.

HISTORY: Laws, 1975, ch. 464, § eff from and after passage (approved April 3, 1975).

§ 9-9-17. Additional judge for Jackson County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of Jackson County and particularly to facilitate and make possible the trial and disposition of the large number of causes on said docket and in the youth court, there shall be two (2) county judges for Jackson County, Mississippi, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the presently existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as Place One and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as Place Two. There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of Jackson County who has been for the longest time continuously a county judge of said county shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the said county judges other than as cast upon them by the Constitution and laws of this state, the county court of Jackson County may, in the discretion of the county judge who has been for the longest time continuously a judge of said court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The two (2) county judges shall be elected at the same time and in the same manner now prescribed by law for the existing judgeship of Jackson County.

(5) The Board of Supervisors of Jackson County may, in its discretion, set aside, appropriate and expend moneys from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes.

The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

HISTORY: Codes, 1942, § 1604.7; Laws, 1970, ch. 337, §§ 1-4; Laws, 1975, ch. 491; Laws, 1985, ch. 536, § 3; Laws, 1986, ch. 400, § 1, eff from and after October 1, 1986.

Cross References — Provisions of the Homestead Exemption Law, see §§ 27-33-1 et seq.

§ 9-9-18. Additional county court judge for Rankin County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of Rankin County and particularly to facilitate

and make possible the trial and disposition of the large number of causes on the docket and in the youth court, there shall be two (2) county judges for Rankin County, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the presently existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as "Place One" and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as "Place Two." There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of Rankin County who has been for the longest time continuously a county judge of the county shall have the right to assign causes, terms and dockets. Should neither judge of the county court have served longer in office than the other, then that judge of this county court who has been for the longest time a member of The Mississippi Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the county judges other than as cast upon them by the Constitution and laws of this state, the county court of Rankin County may, in the discretion of the county judge who has been for the longest time continuously a judge of the court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The initial holder of the additional judgeship created by this section, or "Place Two," shall be elected in the regular election of November 2002; candidates therefor shall qualify to run not later than forty-five (45) days before that election. The person elected shall begin the term of office in January of 2003 at the same time as county judges generally, and there shall be no vacancy of the office before that time. The two (2) judges shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(5) The Board of Supervisors of Rankin County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

HISTORY: Laws, 2002, ch. 495, § 1, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Editor's Notes — The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2002, ch. 495, § 1.

§ 9-9-18.1. Additional county court judge for Madison County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of Madison County and particularly to facilitate and make possible the trial and disposition of the large number of causes on the docket and in the youth court, there shall be two (2) county judges for Madison County, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the presently existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as Place One and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as Place Two. There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of Madison County who has been for the longest time continuously a county judge of the county shall have the right to assign causes, terms and dockets. Should neither judge of the county court have served longer in office than the other, then that judge of this county court who has been for the longest time a member of The Mississippi Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the county judges other than as cast upon them by the Constitution and laws of this state, the county court of Madison County may, in the discretion of the county judge who has been for the longest time continuously a judge of the court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The initial holder of the additional judgeship created by this section, or "Place Two," shall be elected in the regular election of November 2002; candidates therefor shall qualify to run not later than forty-five (45) days before that election. The person elected shall begin the term of office in January of 2003 at the same time as county judges generally, and there shall be no vacancy of the office before that time. The two (2) judges shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(5) The Board of Supervisors of Madison County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

HISTORY: Laws, 2002, ch. 495, § 2, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Editor's Notes — The United States Attorney General, by letter dated July 22, 2002, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2002, ch. 495, § 2.

§ 9-9-18.2. County court judge for Pearl River County.

(1) In order to relieve the crowded condition of the docket in the courts and in the youth court of Pearl River County and particularly to facilitate and make possible the trial and disposition of the large number of causes on the docket and in the youth court, there shall be a county court with one (1) county judge for Pearl River County, provided for and elected as herein set out.

(2) The county court of Pearl River County may, in the discretion of the county judge, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(3) The initial holder of the judgeship created by this section shall be elected in the regular election of November 2010; candidates therefor shall qualify to run not later than sixty (60) days before that election. The person elected shall begin the term of office in January of 2011 at the same time as county judges generally, and there shall be no vacancy of the office before that time. Thereafter, the judge shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(4) The Board of Supervisors of Pearl River County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of the judge, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

HISTORY: Laws, 2010, ch. 442, § 1, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Editor's Notes — By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 442.

Cross References — Provisions of the Homestead Exemption Law, see §§ 27-33-1 et seq.

§ 9-9-18.3. Additional county court judges for Lauderdale County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of Lauderdale County and particularly to facilitate and make possible the trial and disposition of the large number of causes on the docket and in the youth court, there shall be two (2) county judges for Lauderdale County, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the presently existing judgeship and its

succession to be denominated for purposes of appointment, nomination and election only as "Place One" and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as "Place Two." There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of Lauderdale County who has been for the longest time continuously a county judge of the county shall have the right to assign causes, terms and dockets. Should neither judge of the county court have served longer in office than the other, then that judge of the county court who has been for the longest time a member of The Mississippi Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the said county judges other than as cast upon them by the Constitution and laws of this state, the county court of Lauderdale County may, in the discretion of the county judge who has been for the longest time continuously a judge of said court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The initial holder of the additional judgeship created by this section, or "Place Two," shall be elected in the regular election of November 2006; candidates therefor shall qualify to run not later than forty-five (45) days before that election. The person elected shall begin the term of office in January of 2007 at the same time as county judges generally, and there shall be no vacancy of the office before that time. Thereafter the two (2) judges shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(5) The Board of Supervisors of Lauderdale County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

HISTORY: Laws, 2006, ch. 507, § 1, eff June 30, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Editor's Notes — On June 30, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 507, § 1.

§ 9-9-18.5. Additional county court judge for DeSoto County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of DeSoto County and particularly to facilitate and make possible the trial and disposition of the large number of causes on the

docket and in the youth court, there shall be two (2) county judges for DeSoto County, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, the first existing judgeship and its succession to be denominated for purposes of appointment, nomination and election only as "Place One" and the judgeship hereby created and its succession for said selfsame purposes and none other to be designated as "Place Two." There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of DeSoto County who has been for the longest time continuously a county judge of the county shall have the right to assign causes, terms and dockets. Should neither judge of the county court have served longer in office than the other, then that judge who has been for the longest time a member of The Mississippi Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the county judges other than as cast upon them by the Constitution and laws of this state, the county court of DeSoto County may, in the discretion of the county judge who has been for the longest time continuously a judge of the court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The initial holder of the additional judgeship created by this section, or "Place Two," shall be elected in the regular election of November 2008; candidates therefor shall qualify to run not later than forty-five (45) days before that election. The term of office of the person elected shall begin on the first day of January following the November election and shall end at the same time as for county judges generally. The two (2) judges shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(5) The Board of Supervisors of DeSoto County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

HISTORY: Laws, 2008, ch. 395, § 1, eff July 16, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

Editor's Notes — On July 16, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Chapter 395, Laws of 2008.

Cross References — Provisions of the Homestead Exemption Law, see §§ 27-33-1 et seq.

§ 9-9-18.6. Additional county court judge for Lee County.

(1) In order to relieve the crowded condition of the docket in the county court and in the youth court of Lee County and particularly to facilitate and make possible the trial and disposition of the large number of causes in the youth court, there shall be two (2) county judges for Lee County, provided for and elected as herein set out.

(2) For the purposes of nomination and election, the two (2) judgeships shall be separate and distinct, with the county judgeship that existed on January 1, 2018, to be denominated for purposes of appointment, nomination and election only as "Place One" and the additional judgeship hereby created to be designated as "Place Two." There shall be no distinction whatsoever in the powers, duties and emoluments of the two (2) offices of county judge, except that the county judge of Lee County who has been for the longest time continuously a county judge of the county shall have the right to assign causes, terms and dockets. Should neither judge of the county court have served longer in office than the other, then that judge of the county court who has been for the longest time a member of The Mississippi Bar shall have the right to assign causes, terms and dockets.

(3) While there shall be no limitation whatsoever upon the powers and duties of the county judges other than as cast upon them by the Constitution and laws of this state, the county court of Lee County may, in the discretion of the county judge who has been for the longest time continuously a judge of the court, be divided into civil, equity, criminal and youth court divisions as a matter of convenience by the entry of an order upon the minutes of the court.

(4) The initial holder of the additional judgeship created by this section, or "Place Two," shall be elected in the regular election of November 2018. The person elected shall begin the term of office in January 2019 at the same time as county judges generally, and there shall be no vacancy of the office before that time. The two (2) judges shall otherwise be elected, and any vacancy in office filled, as provided for county judges generally.

(5) Each county judge shall appoint a court reporter in accordance with Section 9-13-61 for the purpose of doing the necessary stenographic work of the court.

(6) The Board of Supervisors of Lee County may, in its discretion, set aside, appropriate and expend monies from the general fund to be used in the payment of salaries of judges, clerks, reporters, officers and employees of the youth court division of the county court, including the related facilities of the youth court division of the county court, and such funds shall be expended for no other purposes. The county shall not be reimbursed for the amount of any such levy provided for by this section under the terms of the Homestead Exemption Law.

HISTORY: Laws, 2018, ch. 418, § 2, eff from and after passage (approved March 26, 2018).

Cross References — Provisions of the Homestead Exemption Law, see § 27-33-1 et seq.

§ 9-9-19. Term of court fixed.

(1) A term of court shall be held in the county courthouse of the county, beginning on the second Monday of each month and continuing so long as may be necessary; but in counties where there are two (2) circuit court districts the county court shall meet alternately in the two (2) districts in the county courthouse in the same month and in the same district as the board of supervisors of said county holds its meetings. Provided that in the County of Jones, a county having two (2) judicial districts, that a term shall be held in the second judicial district of said county on the second Monday of each month; and provided that in the first judicial district a term shall be held on the fourth Monday of January, the fourth Monday of March, the fourth Monday of April, the fourth Monday of June and the fourth Monday of October. Provided that in the County of Hinds, a county having two (2) judicial districts, a term shall be held in the first judicial district on the second Monday of each month and in the second judicial district on the second Monday of March, June, September and December, and provided further that, when such terms are held concurrently, either of the county judges of Hinds County may be assigned to hold all or any part of such terms in either of the two (2) judicial districts. Provided, further, that in the County of Bolivar, a county having two (2) judicial districts, a term shall be held in the first judicial district on the second Monday of April, August and December, and in the second judicial district on the second Monday of January, February, March, May, June, July, September, October and November. Provided, however, that in the County of Harrison, a county having two (2) county judges and two (2) judicial districts, that a term shall be held in each judicial district concurrently each month. Provided, however, that the judge of the county court for good cause shown may, by order spread on the minutes of the county court, designate some place other than the county courthouse for the holding of such term of the county court as may be designated in said order. The county judge may call a special term of the county court upon giving ten (10) days' notice, and such notice shall be given by posting the same at the front door of the courthouse in said county and by the publication of said notice for one insertion in some newspaper of general circulation in the county.

(2) If a county court is established pursuant to an agreement between two or more counties as provided in Section 9-9-3, the terms thereof shall remain continuously open and shall not be closed and the judge of such court shall sit in rotation in the county seat of each county, beginning on Monday of each week for at least a week in each county in each month.

HISTORY: Codes, 1930, §§ 693, 702; 1942, §§ 1604, 1613; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, chs. 234, 247; Laws, 1948, ch. 236; Laws, 1950, chs. 319, 321; Laws, 1958, ch. 231, § 5; Laws, 1962, chs. 300, 301, 302; Laws, 1964, ch. 322; Laws, 1966, ch. 344, § 1; Laws, 1968, ch. 311, § 1; Laws, 1970, chs. 335, § 1, 336, § 1; Laws, 1971, ch. 397, § 1; Laws, 1972, ch. 348, § 2, eff from and after October 1, 1972.

Cross References — Exemption of the judiciary from provisions of open meetings law, see § 25-41-3.

JUDICIAL DECISIONS

1. In general.

The statute should receive a reasonably liberal interpretation in furtherance of its object. Marsalis v. State, 191 Miss. 49, 2 So. 2d 792, 1941 Miss. LEXIS 145 (Miss. 1941).

While an order, under which a term of county court was to open at the county court house but would thereafter convene in another city for the trial of cases originating in certain supervisors' districts of the county, was valid, it did not circumscribe the jurisdiction of the county court as to venue in any particular portion of the county, or deprive the court of jurisdiction, while sitting at the county court house, to dismiss a prosecution which had been instituted and tried in such other city, and, therefore, a subsequent prosecution of the same charge in the circuit court was not subject to the defense that the prosecution was still pending in county court. Marsalis v. State, 191 Miss. 49, 2 So. 2d 792, 1941 Miss. LEXIS 145 (Miss. 1941).

It is not within the allowance of the statute that an order by the county judge should be so framed as to confine the territorial jurisdiction of the court when sitting at a place, fixed in the order, to cases originating within the area of, and adjacent to, that place and to the effect that thereby the court would have no territorial jurisdiction of that area while sitting elsewhere in the county. Marsalis v. State, 191 Miss. 49, 2 So. 2d 792, 1941 Miss. LEXIS 145 (Miss. 1941).

County court is unauthorized to try causes in vacation; hence trial and judgment during vacation were void. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

Failure to object to trial of eminent domain proceeding before county court in vacation did not confer jurisdiction on county court by consent. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

RESEARCH REFERENCES

ALR.

Place of holding sessions of trial court as affecting validity of its proceedings. 18 A.L.R.3d 572.

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

CJS.

21 C.J.S., Courts §§ 148, 149.

§ 9-9-21. Jurisdiction.

(1) The jurisdiction of the county court shall be as follows: It shall have jurisdiction concurrent with the justice court in all matters, civil and criminal of which the justice court has jurisdiction; and it shall have jurisdiction concurrent with the circuit and chancery courts in all matters of law and equity wherein the amount of value of the thing in controversy shall not exceed, exclusive of costs and interest, the sum of Two Hundred Thousand Dollars ($200,000.00), and the jurisdiction of the county court shall not be affected by any setoff, counterclaim or cross-bill in such actions where the amount sought to be recovered in such setoff, counterclaim or cross-bill exceeds Two Hundred Thousand Dollars ($200,000.00). Provided, however, the party filing such setoff, counterclaim or cross-bill which exceeds Two Hundred Thousand Dollars ($200,000.00) shall give notice to the opposite party or

parties as provided in Section 13-3-83, and on motion of all parties filed within twenty (20) days after the filing of such setoff, counterclaim or cross-bill, the county court shall transfer the case to the circuit or chancery court wherein the county court is situated and which would otherwise have jurisdiction. It shall have exclusively the jurisdiction heretofore exercised by the justice court in the following matters and causes: namely, eminent domain, the partition of personal property, and actions of unlawful entry and detainer, provided that the actions of eminent domain and unlawful entry and detainer may be returnable and triable before the judge of said court in vacation. The county court shall have jurisdiction over criminal matters in the county assigned by a judge of the circuit court district in which the county is included.

(2) In the event of the establishment of a county court by an agreement between two (2) or more counties as provided in Section 9-9-3, it shall be lawful for such court sitting in one (1) county to act upon any and all matters of which it has jurisdiction as provided by law arising in the other county under the jurisdiction of said court.

HISTORY: Codes, 1930, § 693; 1942, § 1604; Laws, 1926, ch. 131; Laws, 1934, ch. 236; Laws, 1936, ch. 247; Laws, 1948, ch. 236; Laws, 1950, ch. 321; Laws, 1962, ch. 300; Laws, 1964, ch. 322; Laws, 1966, ch. 344, § 1; Laws, 1968, ch. 311, § 1; Laws, 1970, ch. 335, § 1; Laws, 1974, ch. 477, § 2; Laws, 1984, ch. 348; Laws, 1991, ch. 311, § 1; Laws, 1998, ch. 427, § 1; Laws, 2003, ch. 429, § 1; Laws, 2013, ch. 361, § 1, eff October 22, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Right Act of 1965).

Editor's Notes — The effective date of Chapter 361, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 361, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 22, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 361 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 361, so Chapter 361 became effective from and after October 22, 2013, the date of the United States Attorney General's response letter.

Cross References — Jurisdiction of Supreme Court, see § 9-3-9.

Jurisdiction of chancery court in general, see § 9-5-81.

Jurisdiction of circuit courts generally, see §§ 9-7-81 et seq.

Authority of circuit court judge to assign criminal matters to county judge, see § 9-9-21.

Civil practice and procedure provisions common to courts, see § 11-1-1 et seq.

Civil practice and procedure in county courts, see §§ 11-9-1 et seq.

Partition of personalty by county court or justice court judges, see § 11-21-73.

Unlawful entry and detainer proceedings in county court, see § 11-25-101 et seq.

Jurisdiction and powers of county courts in eminent domain proceedings, see § 11-27-3.

Suits by and against state or its political subdivisions, see §§ 11-45-1 et seq.

Provisions for bringing forfeiture proceedings in county court pursuant to the Uniform Controlled Substances Law, see § 41-29-177.

Procedure for forfeiture of property seized for violation of fish and game laws, see § 49-7-251 et seq.

Jurisdiction of county courts in paternity cases, see § 93-9-15.

Jurisdictional limits of county court, as set forth in this section, as affecting where proceedings may be brought for forfeiture of vehicle used in drive-by shooting, see § 97-3-111.

Appeals to circuit courts in criminal cases, see §§ 99-35-1 et seq.

Counterclaims and cross-claims which exceed county court's jurisdiction, see Miss. R. Civ. P. 13.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction in general.
3. Jurisdictional amount.
4. Jurisdiction in vacation.
5. Exclusive jurisdiction.
6. Criminal jurisdiction.

1. In general.

Pursuant to Miss. Code Ann. § 9-9-21, the buyers were required to give notice to the dealership, and both parties were required to make a motion, within 20 days after the filing of the counterclaim, to transfer the case to the circuit or chancery court of the county in which the county court was located; no such notice was given, and the parties failed to make a motion within 20 days, such that their failure to notify the court could not confer jurisdiction on the county court; since the parties did not follow these mandated procedures and the counterclaim failed to comply with the then jurisdictional prerequisites, the counterclaim could not be adjudicated in the county court. Hobbs Auto., Inc. v. Dorsey, 2005 Miss. LEXIS 90 (Miss. Feb. 10, 2005).

Chapter 17 of the Code of 1930, pertaining to county courts, is not a repeal but a re-enactment of the applicable provisions of the Act of 1926. Quitman County v. Turner, 196 Miss. 746, 18 So. 2d 122, 1944 Miss. LEXIS 254 (Miss. 1944).

One of the purposes in the establishment of county courts was to provide a judicial officer possessing all the qualifications of a circuit judge or chancellor, who would be available at all times for service in habeas corpus cases and to furnish a speedy remedy in habeas corpus. Cole v. Cole, 194 Miss. 292, 12 So. 2d 425, 1943 Miss. LEXIS 71 (Miss. 1943).

County Court Act did not repeal entire eminent domain chapter, but both must be construed together, and all provisions of each not repugnant to provisions of other must stand and in case of repugnancy county court chapter controls. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

Statute creating county courts in certain counties held not local or special law, when interpreted as authorizing governor to determine population of counties automatically coming under act. State ex rel. Knox v. Speakes, 144 Miss. 125, 109 So. 129, 1926 Miss. LEXIS 339 (Miss. 1926).

2. Jurisdiction in general.

Creditor properly brought its claim before a justice court because the county lacked a county court and then appealed to the circuit court, even though a debtor's estate was still open because creditor's action was purely a possessory action. Gandy v. Citicorp, 985 So. 2d 371, 2008 Miss. App. LEXIS 360 (Miss. Ct. App. 2008).

Injunctive order granted by the county court judge was within the meaning of Miss. Code Ann. § 9-9-21(1) as that statute had been interpreted by case law; where property or property interests were involved, the county court had appropriate jurisdiction. Swan v. Hill, 855 So. 2d 459, 2003 Miss. App. LEXIS 628 (Miss. Ct. App. 2003).

A claim for specific performance of contract of employment plus attendant injunctive relief is within the jurisdiction of the county court on its equity side, and is also within the jurisdiction of the chancery court. Lee v. Coahoma Opportunities, Inc., 485 So. 2d 293, 1986 Miss. LEXIS 2423 (Miss. 1986).

Where timely objection was not made, as specifically required by § 1433, venue was waived. Wofford v. Cities Service Oil Co., 236 So. 2d 743, 1970 Miss. LEXIS 1499 (Miss. 1970).

Supreme court, circuit courts, chancery courts and county courts, when acting on appeal from a special possessory court of a justice of the peace, have only such jurisdiction to adjudicate regarding title to land as is vested in special court from which appeal was taken. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Original jurisdiction to make conclusive and final adjudication of title to land rests alone with circuit and chancery courts, and to a limited extent with the county courts. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

County court has jurisdiction under this section of ejectment action to recover possession of land whose value does not exceed $1,000. Allen v. Gibson, 198 Miss. 23, 20 So. 2d 479, 1945 Miss. LEXIS 164 (Miss. 1945).

Jurisdiction of county court is not confined to particular justice district, but is concurrent with jurisdiction of all justices of county. Webb v. State, 158 Miss. 715, 131 So. 262, 1930 Miss. LEXIS 108 (Miss. 1930).

County court had no jurisdiction of suit by school patron to restrain further employment of alleged incompetent driver of school truck, county court having no jurisdiction in equity for maintenance of civil rights. Welch v. Bryant, 157 Miss. 559, 128 So. 734, 1930 Miss. LEXIS 331 (Miss. 1930).

Chancellor ordering issuance of writ of injunction could not transfer case to county court for hearing on whether injunction should be made perpetual. Welch v. Bryant, 157 Miss. 559, 128 So. 734, 1930 Miss. LEXIS 331 (Miss. 1930).

3. Jurisdictional amount.

Jurisdiction attached when the company elected to file its complaint in county court for an amount within the jurisdictional limit of $200,000, as the company sought damages for time and material in the amount of $171,073.63; jurisdiction cannot be divested by upwardly fluctuating attorney's fees, and the county court was not divested of jurisdiction and erred in transferring the case to circuit court. Ram-Kabir of Am., LLC v. S.C. Anderson Grp. Int'l, 199 So. 3d 1240, 2016 Miss. LEXIS 380 (Miss. 2016).

County court has the authority to grant an amendment to the ad damnum clause even though by doing so it will divest itself of jurisdiction and require the matter to be transferred to either the chancery or circuit courts. Wal-Mart Super Ctr. v. Long, 852 So. 2d 568, 2003 Miss. LEXIS 312 (Miss. 2003).

County court had jurisdiction of proceeding for partition of land held by tenants in common in which original bill alleged that value of lots sought to be partitioned at time of filing of bill would not exceed $1000 and final decree of county court adjudicated truth of this fact and found that value of land had increased since time of filing of bill because of discovery of oil nearby and lots brought $1,200 at sale, since jurisdiction having been acquired by original bill it was not defeated by subsequent events. Barnes v. Rogers, 206 Miss. 887, 41 So. 2d 58, 1949 Miss. LEXIS 311 (Miss. 1949).

Jurisdiction of a court is determined by amount in controversy at time when court is first called on to exercise jurisdiction, which, in trial court, is amount claimed at time when suit is filed, and jurisdiction once acquired is not defeated by subsequent events, even though they are of such character as would have prevented jurisdiction from attaching in first instance. Barnes v. Rogers, 206 Miss. 887, 41 So. 2d 58, 1949 Miss. LEXIS 311 (Miss. 1949).

County court is court of general jurisdiction although limited in amount of its jurisdiction. Barnes v. Rogers, 206 Miss. 887, 41 So. 2d 58, 1949 Miss. LEXIS 311 (Miss. 1949).

A county court had no jurisdiction of a replevin action involving life insurance policies, the value of which was given in the affidavit as totaling $100 but which actually had a cash surrender value in excess of $1000. Van Norman v. Van Norman, 203 Miss. 310, 34 So. 2d 733, 1948 Miss. LEXIS 270 (Miss. 1948).

A judgment of the trial court sustaining a demurrer to an action to enforce a money reserve title contract, based on the claim that the amount sued for exceeded the jurisdictional amount and that the plaintiff failed to demand possession for the chattel before bringing suit, was not on the merits, and so the defense of res judicata was not available in a second action, in which the sum sued for was within the jurisdictional amount. Grant v. Dotson, 193 Miss. 577, 10 So. 2d 680, 1942 Miss. LEXIS 155 (Miss. 1942).

4. Jurisdiction in vacation.

However, as to eminent domain cases, statute (Laws 1936, ch. 247) now confers on county judge in vacation jurisdiction county court had in term time. State Highway Com. v. Day, 181 Miss. 708, 180 So. 794, 1938 Miss. LEXIS 111 (Miss. 1938).

County court is unauthorized to try causes in vacation; hence trial and judgment during vacation were void. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

Failure to object to trial of eminent domain proceeding before county court in vacation did not confer jurisdiction on county court by consent. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

5. Exclusive jurisdiction.

Exclusive jurisdiction of an unlawful entry detainer case is now vested in the county court by reason of this section. Gardner v. Cook, 173 Miss. 244, 158 So. 150, 1934 Miss. LEXIS 389 (Miss. 1934).

The effect of this section is to abolish special eminent domain courts (see Code 1942 § 2750) in counties having county courts, and to vest the jurisdiction thereof in the county court. City of Hattiesburg v. Pritchett, 160 Miss. 342, 134 So. 140, 1931 Miss. LEXIS 181 (Miss. 1931).

6. Criminal jurisdiction.

A county court properly exercised jurisdiction in a criminal proceeding for hunting during a closed season and hunting without wearing fluorescent orange where the county court judge reviewed the tickets issued to the defendant and noted that they were not supported by affidavits, and held that the justice court never attained jurisdiction over the case. Hodnett v. State, 787 So. 2d 670, 2001 Miss. App. LEXIS 211 (Miss. Ct. App. 2001).

A county court, though having concurrent jurisdiction with a justice of the peace court over the crime of assault and battery, did not have jurisdiction to proceed with defendant's prosecution for that crime where the justice of the peace court had first acquired full and exclusive jurisdiction of the case and the case was still pending there when an affidavit charging defendant with the same crime was filed with the county court. Rhodes v. State, 335 So. 2d 907, 1976 Miss. LEXIS 1955 (Miss. 1976).

Jurisdiction of county court in misdemeanor case is co-extensive with boundary of county wherein offense was committed, and venue of crime is in that county. Webb v. State, 158 Miss. 715, 131 So. 262, 1930 Miss. LEXIS 108 (Miss. 1930).

To confer jurisdiction on county court in misdemeanor case, State need only allege and prove crime was committed in county. Webb v. State, 158 Miss. 715, 131 So. 262, 1930 Miss. LEXIS 108 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Place of holding sessions of trial court as affecting validity of its proceedings. 18 A.L.R.3d 572.

Civil actions removable from state court to federal court under 28 U.S.C.S. § 1443. 159 A.L.R. Fed. 377.

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 57 et seq.

CJS.

21 C.J.S., Courts §§ 9, 10.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March 1979.

§ 9-9-23. Powers of county judge.

The county judge shall have power to issue writs, and to try matters, of habeas corpus on application to him therefor, or when made returnable before him by a superior judge. He shall also have the power to order the issuance of writs of certiorari, supersedeas, attachments, and other remedial writs in all cases pending in, or within the jurisdiction of, his court. He shall have the authority to issue search warrants in his county returnable to his own court or to any court of a justice of the peace within his county in the same manner as is provided by law for the issuance of search warrants by justices of the peace. In all cases pending in, or within the jurisdiction of, his court, he shall have, in term time, and in vacation, the power to order, do or determine to the same extent and in the same manner as a justice of the peace or a circuit judge or a chancellor could do in term time or in vacation in such cases. But he shall not have original power to issue writs of injunction, or other remedial writs in equity or in law except in those cases hereinabove specified as being within his jurisdiction: Provided, however, that when any judge or chancellor authorized to issue such writs of injunction, or any other equitable or legal remedial writs hereinabove reserved, shall so direct in writing the hearing of application therefor may be by him referred to the county judge, in which event the said direction of the superior judge shall vest in the said county judge all authority to take such action on said application as the said superior judge could have taken under the right and the law, had the said application been at all times before the said superior judge. The jurisdiction authorized under the foregoing proviso shall cease upon the denying or granting of the application.

HISTORY: Codes, 1930, § 698; 1942, § 1609; Laws, 1926, ch. 131.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Rule relative to injunctive relief, see Miss. R. Civ. P. 65.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction of county judge.
3. Habeas corpus proceedings.

1. In general.

Assuming that the circuit court in which an indictment was returned would have the authority to permit the amendment to the indictment, the county court to which the cause was transferred had an equal right to do so. Grimsley v. State, 215 Miss. 43, 60 So. 2d 509, 1952 Miss. LEXIS 535 (Miss. 1952).

Chancellor ordering issuance of writ of injunction could not transfer case to county court for hearing on whether injunction should be made perpetual. Welch v. Bryant, 157 Miss. 559, 128 So. 734, 1930 Miss. LEXIS 331 (Miss. 1930).

2. Jurisdiction of county judge.

County court had no jurisdiction of suit by school patron to restrain further employment of alleged incompetent driver of school truck, county court having no jurisdiction in equity for maintenance of civil rights. Welch v. Bryant, 157 Miss. 559, 128 So. 734, 1930 Miss. LEXIS 331 (Miss. 1930).

3. Habeas corpus proceedings.

County judge presented with petition for writ of habeas corpus by noncustodial parent followed by proof that custodial parent has become frequent drug user and is substantially emotionally unstable may refuse to enforce prior chancery court decree, and may enter judgment dismissing petition and temporarily vesting custody of child with noncustodial parent pending further action by chancery court on any petition for modification that may be pending or may be brought by either or both parties. Wade v. Lee, 471 So. 2d 1213, 1985 Miss. LEXIS 2130 (Miss. 1985).

The chancery court in granting a divorce is authorized to make such orders touching the care, custody and maintenance of the children of the marriage as may seem equitable and just and where the chancery court makes no order of custody, the county court has jurisdiction to issue writ of habeas corpus and to determine the rightful custody of the minor. Payne v. Payne, 58 So. 2d 377 (Miss. 1952).

One of the purposes in the establishment of county courts was to provide a judicial officer possessing all the qualifications of a circuit judge or chancellor, who would be available at all times for service in habeas corpus cases and to furnish a speedy remedy in habeas corpus. Cole v. Cole, 194 Miss. 292, 12 So. 2d 425, 1943 Miss. LEXIS 71 (Miss. 1943).

A county judge, passing upon an application in habeas corpus, acts not as a county court, but with all the power and authority of a circuit judge or chancellor, and an appeal may be taken direct to the supreme court under § 1149 (Code 1942). Cole v. Cole, 194 Miss. 292, 12 So. 2d 425, 1943 Miss. LEXIS 71 (Miss. 1943).

RESEARCH REFERENCES

ALR.

Power of successor judge taking office during termtime to vacate, etc., judgment entered by his predecessor. 11 A.L.R.2d 1117.

Propriety and legality of issuing only one search warrant to search more than one place or premises occupied by same person. 31 A.L.R.2d 864.

Authority to consent for another to search or seizure. 31 A.L.R.2d 1078.

Premises temporarily unoccupied as dwelling within provision forbidding unreasonable search of dwellings. 33 A.L.R.2d 1430.

Seizure of books, documents, or other papers under search warrant not describing such items. 54 A.L.R.4th 391.

§ 9-9-25. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.
§ 9-9-25. [Codes, 1942, § 1614; Laws, 1934, ch. 237]

Editor's Notes — Former § 9-9-25 authorized county court judges to deliver opinions, make and sign judgments and decrees, and try cases during vacation of the court.

§ 9-9-27. Transfer of cases; prosecution by affidavit.

In any civil case instituted in the circuit court, wherein all parties file a motion to transfer said case to the county court for trial, or wherein all parties file an instrument of writing consenting to such a transfer, the circuit court may, in its discretion, transfer the case to the county court for trial; and the said county court shall have full jurisdiction of and shall proceed to try any case so transferred, provided, however, that such order of transfer be rendered prior to the empaneling of the jury in such cases.

In misdemeanor cases and in felony cases not capital, wherein indictments have been returned by the grand jury, the circuit court may transfer with full jurisdiction all or any of the same, in its discretion, to the county court for trial; and the said county court shall have jurisdiction of and shall proceed to try all charges of misdemeanor which may be preferred by the district attorney or by the county prosecuting attorney or by the sheriff on affidavit sworn to before the circuit clerk of the county; and prosecutions by affidavit are hereby authorized in misdemeanor cases under the same procedure as if indictments had been returned in the circuit court and same had been transferred to the county court.

And, provided further, any reputable citizen may make an affidavit charging crime before the judge of the county court, and such affidavit shall be filed with the clerk of the county court, and if the crime charged is a misdemeanor, the county court shall have jurisdiction to try and dispose of said charge and, if the crime charged be a felony, the county judge shall have jurisdiction to hear and determine said cause, the same as now provided by law to be done by justices of the peace, and to commit the person so charged, with or without bail as the evidence may warrant, or to discharge the defendant.

HISTORY: Codes, 1930, § 694; 1942, § 1605; Laws, 1926, ch. 131; Laws, 1944, ch. 191; Laws, 1952, ch. 255.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Criminal cases.

1. In general.

Words "for trial," in statute respecting transfer of cases from circuit court to county court, include everything circuit court could have done had case not been transferred. Ex parte Tucker, 164 Miss. 20, 143 So. 700, 1932 Miss. LEXIS 219 (Miss. 1932).

2. Criminal cases.

A deputy clerk, who was neither a judge nor a conservator of the peace, as defined by §§ 99-15-3 and 99-15-5, was without authority under § 9-9-27 to issue an arrest warrant; accordingly, the warrant issued by him was invalid. Lanier v. State, 450 So. 2d 69, 1984 Miss. LEXIS 1695 (Miss. 1984).

Assuming that the Circuit Court in which an indictment was returned would have the authority to permit the amendment to the indictment, the county court to which the cause was transferred had an equal right to do so. Grimsley v. State, 215 Miss. 43, 60 So. 2d 509, 1952 Miss. LEXIS 535 (Miss. 1952).

Where indictment was returned charging defendant with possession of intoxicating liquor, capias was issued, and defendant arrested and released on bond to a later day of the term, circuit court had authority to transfer the cause to county court. Baylis v. State, 209 Miss. 335, 46 So. 2d 796, 1950 Miss. LEXIS 395 (Miss. 1950).

In prosecution for felonious assault by cutting with knife, trial court's refusal to transfer case to county court pursuant to motion made to that effect on trial day, when all of witnesses who were shown to be material in any respect were present at court, including character witnesses for accused from distant county, was not abuse of trial court's discretion. Ferrell v. State, 208 Miss. 539, 45 So. 2d 127, 1950 Miss. LEXIS 272 (Miss. 1950).

County court to which circuit court has transferred criminal case for trial has right to proceed with prosecution of father for desertion and failure to support child although chancery court had acquired jurisdiction in matter prior to commencement of prosecution through divorce action brought by mother against father. Williams v. State, 207 Miss. 816, 43 So. 2d 389, 1949 Miss. LEXIS 391 (Miss. 1949), overruled, Lenoir v. State, 237 Miss. 620, 115 So. 2d 731, 1959 Miss. LEXIS 512 (Miss. 1959).

The fact that a capias for arrest on a misdemeanor charge was issued on the affidavit of the county prosecuting attorney, by the clerk of the county court, without any order therefor from the county judge, did not render it invalid or avoid jurisdiction by the court over the person of the defendant, since, inasmuch as the affidavit of the county prosecuting attorney took the place of an indictment in the circuit court, the process on the charge of misdemeanor so made was a capias to be issued by the clerk of the county court. Cooper v. State, 193 Miss. 672, 10 So. 2d 764, 1942 Miss. LEXIS 156 (Miss. 1942).

Legislature may create inferior court having jurisdiction of felonies and have indictments originating in circuit court transferable to inferior court. Ex parte Tucker, 164 Miss. 20, 143 So. 700, 1932 Miss. LEXIS 219 (Miss. 1932).

Defendant being in court, no notice of order transferring indictment from circuit court to county court other than entry of order on minutes was necessary. Ex parte Tucker, 164 Miss. 20, 143 So. 700, 1932 Miss. LEXIS 219 (Miss. 1932).

§ 9-9-29. Court of record; duties of circuit clerk and sheriff; fees.

The county court shall be a court of record and the clerk of the circuit court shall be the clerk of the county court, and he or his deputy shall attend all the sessions of the county court, and have present at all sessions, all books, records, files, and papers pertaining to the term then in session. The dockets, minutes, and records of the county court shall be kept, so far as is practicable, in the same manner as are those of the circuit court as provided by statute and the Mississippi Rules of Civil Procedure. The sheriff shall be the executive officer of the county court; he shall by himself, or deputy, attend all its sessions, and he shall serve all process and execute all writs issued therefrom in the manner as such process and writs would be served and executed when issued by the justice courts, or by the circuit or chancery courts according as appertains to the value of the cause or matter in hand. The clerk and sheriff shall receive the same fees for attendance, and for other services as are allowed by law to the clerk and to the sheriffs for like duties in the circuit and chancery courts; provided however, that in all cases where the justice courts have concurrent jurisdiction with the county court, the clerk shall be allowed to receive only such fees as are allowed to justice courts, and the sheriff shall be allowed only such fees as the constable in said justice court would be entitled to under the law for similar services.

HISTORY: Codes, 1930, § 699; 1942, § 1610; Laws, 1926, ch. 131; Laws, 1928, Ex. ch. 66; Laws, 1991, ch. 573, § 10, eff from and after July 1, 1991.

Cross References — Clerk's duty to maintain general docket, see Miss. R. Civ. P. 79.

JUDICIAL DECISIONS

1. In general.

Sheriff who has received $250 per year in payment of "public services not otherwise provided for," under Code 1942 § 3952(f), is not entitled to additional $250 per year under this section [Code 1942 § 1610] for services in county court, as county court has only certain transferred jurisdiction originally exercised by justice, chancery and circuit courts, and sheriff in county court performs duties that otherwise he generally would have performed in other courts. Forrest County v. Thompson, 204 Miss. 628, 37 So. 2d 787, 1948 Miss. LEXIS 395 (Miss. 1948).

County court clerk, who by law is the same person as the circuit court clerk, and who, as circuit clerk, received an allowance for public service not particularly provided for under Code 1942 § 3934, subsection (c), was not entitled to an additional allowance, as county clerk, for public service not particularly provided for, since by statute the compensation of the county clerk is expressly confined to the fees allowed by law for like duties in the circuit and chancery courts, which means that the county clerk must look to the fixed schedule of the fees specifically allowed by law for services in the circuit and chancery courts, and there is no authority to make allowance to the county clerk as such for public service not particularly provided for. Covington v. Quitman County, 196 Miss. 416, 17 So. 2d 597, 1944 Miss. LEXIS 208 (Miss. 1944).

The word "fees," as used in the statute providing that the clerk and the sheriff shall receive the same fees for attendance, and for other services as are allowed by law, etc., is to be interpreted, according to its common usage, as a charge fixed by law for the services of a public officer. Covington v. Quitman County, 196 Miss. 416, 17 So. 2d 597, 1944 Miss. LEXIS 208 (Miss. 1944).

Filing motion for new trial in county court over ten days after entry of final judgment, during same term, does not suspend judgment, nor resuscitate right of appeal, notwithstanding power of the county court, as a court of record, with respect to control over its minutes, judgments, decrees and orders. Mutual Health & Ben. Ass'n v. Cranford, 173 Miss. 152, 156 So. 876, 1934 Miss. LEXIS 387 (Miss. 1934).

OPINIONS OF THE ATTORNEY GENERAL

A clerk is required to attend the sessions of county court, and is entitled to the fee set forth by law for attendance upon the court, however, the clerk does not have to be physically present the entire time the court is in session, unless required by the court. Thomas, Nov. 6, 1991, A.G. Op. #91-0765.

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 23 et seq.

§ 9-9-31. Duties of prosecuting attorney.

The county prosecuting attorney shall be the prosecuting attorney of the county court, and he shall prosecute all cases therein which he is now required by law to prosecute, and all cases appealed from the county court to the circuit court, in which it is the duty of the county attorney, under the law, to appear and prosecute.

HISTORY: Codes, 1930, § 701; 1942, § 1612; Laws, 1926, ch. 131; Laws, 1978, ch. 509, § 1, eff from and after January 1, 1980.

§ 9-9-33. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-9-33. [Codes, 1930, § 703; 1942, § 1615; Laws, 1926, ch. 131; Laws, 1966, ch. 347, § 1]

Editor's Notes — Former § 9-9-33 specified how a list of jurors was to be procured and what the compensation of jurors and witnesses would be.

§ 9-9-35. Circuit judges authorized to assign cases and other court duties to county judges where dockets overcrowded.

In any county in cases where an overcrowded docket justifies the same, any circuit judge may assign to a county judge in said county only, for hearing and final disposition, any case, cause, hearing or motion, or any proceedings involved in the trial and final disposition thereof.

All orders in said cause, trial or hearing may be signed as follows: "________ County Judge and Acting Circuit Judge by assignment." No special order evidencing said assignment shall be entered on the minutes, except in cases where a county judge is assigned the duty of opening and organizing a court where a grand jury is to be impaneled, in which case an order so assigning the said county judge to act shall be signed and entered on the minutes of the court on the opening day thereof.

No compensation for said services shall be allowed said county judge, neither shall said county judge be compelled to accept any assignment except at his will.

HISTORY: Codes, 1942, § 1605.5; Laws, 1962, ch. 303; Laws, 1982, ch. 476, § 3; Laws, 1989, ch. 378, § 4; Laws, 1989, ch. 486, § 2; Laws, 2013, ch. 361, § 3,

October 22, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Right Act of 1965).

Editor's Notes — The effective date of Chapter 361, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 361, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 22, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 361 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 361, so Chapter 361 became effective from and after October 22, 2013, the date of the United States Attorney General's response letter.

Cross References — For constitutional provision permitting legislature to authorize prosecutions before inferior courts, see Miss. Const. Art. 3, § 27.

Transfer of cases from circuit court to county court, see § 9-9-27.

OPINIONS OF THE ATTORNEY GENERAL

Since this section specifically governs the assignment of cases to a county judge when justified by an overcrowded docket, it controls over the more general statute, § 9-7-3, which provides that the senior judge has the authority to assign causes and dockets. Yerger, July 23, 2004, A.G. Op. 04-0312.

At any of the circuit judges may assign criminal causes or matters involving the handling of guilty please, through criminal information, to the county judge. Yerger, July 23, 2004, A.G. Op. 04-0312.

A circuit judge may not assign an entire category of criminal cases or matters involving the handling of guilty pleas through criminal information to a county judge; rather, assignments should be done on a case-by-case basis. Yerger, July 23, 2004, A.G. Op. 04-0312.

Assignment of causes or matters to a county judge pursuant to this section is by consent of the county judge. Therefore, the latter has discretion is accepting assignments while the former does not appear to have the same authority. Yerger, July 23, 2004, A.G. Op. 04-0312.

§ 9-9-36. Chancellors authorized to assign cases and other court duties to county judges where dockets overcrowded.

In any county in cases where an overcrowded docket justifies the same, any chancellor may assign to a county judge in that county only, for hearing and final disposition, any case, cause, hearing or motion, or any proceedings involved in the trial and final disposition thereof.

All orders in the cause, trial or hearing may be signed as follows:

"____________ County Judge and Acting Chancellor by assignment." No special order evidencing the assignment shall be entered on the minutes.

No compensation for those services shall be allowed the county judge, neither shall the county judge be compelled to accept any assignment except at his will. Furthermore, no assignment of any cause or hearing shall be made where counsel on both sides object to the assignment.

HISTORY: Laws, 1989, ch. 378, § 3; Laws, 1989, ch. 486, § 1; brought forward without change, Laws, 2010, ch. 442, § 3, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the bringing forward without change of this section).

Editor's Notes — By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the bringing forward without change of this section by Laws of 2010, ch. 442.

§ 9-9-37. Certain counties may establish or abolish court.

(1) From and after July 1, 2013, or the date this section is effectuated under Section 5 of the Voting Rights Act of 1965, whichever is later, in any county not brought within the provisions of this chapter by the terms of Sections 9-9-1 and 9-9-3, the board of supervisors is authorized to determine whether a county court shall be established in the county. If a majority of the board are in favor of a county court, then the board shall so certify to the Secretary of State and the Governor shall then issue a proclamation establishing the county court in the county; and thereafter at the next succeeding meeting of the board of supervisors the board shall call an election for the election of a county judge, and the election shall be conducted in the way and manner now provided by law for holding a special election.

(2)(a) Any county not brought within the provisions of this chapter by the terms of Sections 9-9-1 and 9-9-3 that has a county court established under the provisions of subsection (1) of this section may thereafter come from under this chapter in the manner hereinafter provided. On petition of twenty percent (20%) of the qualified electors of the county, addressed to the board of supervisors of the county, an election shall be called by the board of supervisors and conducted in the way and manner now provided by law for a special election for the purpose of determining whether the county court shall be abolished; and, if the majority vote at the election is in favor of abolishing the county court, then the election commission shall so certify to the Secretary of State. The Governor shall then issue a proclamation declaring that the county court in said county be abolished on the first day of the month next succeeding the election.

(b) If a county court is abolished under the provisions of this subsection (2), the board of supervisors is not authorized to establish a county court within less than two (2) years thereafter.

(3) The salary of the county judge shall be as provided in Section 9-9-11.

HISTORY: Codes, 1930, §§ 697, 706; 1942, §§ 1608, 1618; Laws, 1926, ch. 131;

Laws, 1932, ch. 200; Laws, 1934, ch. 233; Laws, 1936, ch. 254; Laws, 1946, ch. 370; Laws, 1950, ch. 251; Laws, 1952, ch. 238; Laws, 1954, ch. 230; Laws, 1954, Ex Sess ch. 15; Laws, 1955 Ex. ch. 39, § 1; Laws, 1956, chs. 231, §§ 1, 2, 233; Laws, 1960, ch. 234; Laws, 1966, ch. 345, § 1; Laws, 1968, ch. 311, § 2; Laws, 1970, ch. 402, § 4; Laws, 1971, ch. 495, § 1; Laws, 1985, ch. 502, § 61; Laws, 2013, ch. 383, § 1, eff October 22, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Right Act of 1965).

Editor's Notes — The effective date of Chapter 383, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Right Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 383, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 22, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 383 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 383, so Chapter 383 became effective from and after October 22, 2013, the date of the United States Attorney General's response letter.

JUDICIAL DECISIONS

1. In general.

This section is to be construed as referring to population of county as a whole and therefore applicable to a county, the rural population of which as a whole exceeded the urban population, although in one or two of judicial districts found in county, the urban population exceeded the rural population. Wilby v. Board of Supervisors, 226 Miss. 744, 85 So. 2d 195, 1956 Miss. LEXIS 458 (Miss. 1956).

Chapter 17 of the Code of 1930, pertaining to county courts, is not a repeal but a re-enactment of the applicable provisions of the Act of 1926. Quitman County v. Turner, 196 Miss. 746, 18 So. 2d 122, 1944 Miss. LEXIS 254 (Miss. 1944).

The salary provision in Code 1942 § 1608 of $3,600 per year for county judge applies only to the larger counties automatically established by the Act of 1926, and the sliding-scale provision of this section applies to the smaller counties which elected to establish county courts under the enabling provisions of the Act of 1926, so that the annual salary for judge of Quitman County Court, established by the people under the enabling provisions of the Act of 1926 at a salary of $2,000 continued to remain at $2,000 after the adoption of 1930 Code since that county fell in that category under this section and did not increase to $3,600, in view of fact that § 697 of 1930 Code (now Code 1942 § 1608) merely carried over the automatic provision of the Act of 1926, whereas § 706 Code 1930 (now this section [Code 1942 § 1618]) carried over the enabling provisions of the Act of 1926. Quitman County v. Turner, 196 Miss. 746, 18 So. 2d 122, 1944 Miss. LEXIS 254 (Miss. 1944).

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts §§ 9 et seq.

§ 9-9-39. Effect of abolition of county court; pending matters transferred.

All pending matters in any county court that may be abolished shall be transferred to the court of proper jurisdiction without the necessity for any motion or order of court for such transfer or for reformation of pleadings, and final judgments or decrees in causes transferred shall include costs incurred in the county court. After abolishment of a county court, executions and all process on final judgments or decrees theretofore entered therein shall be issued by the clerk of the circuit court of the county and made returnable to any court in the county where rendered then having jurisdiction of the subject-matter involved or of any of the parties, and the court to which such executions or process is returned shall have jurisdiction thereof and try all issues pertaining thereto.

After the abolishment of a county court, the circuit clerk of the county shall be the official custodian of all its records and may certify to copies thereof under his seal. When the result of an appeal to the supreme court shall be a reversal of the circuit court and in material particulars in effect an affirmance of the judgment of a county court which has been abolished, the supreme court shall enter judgment in the cause or remand it to the circuit court which shall have full jurisdiction thereof and shall enter final judgment in accordance with the opinion and fiat of the supreme court or proceed as the supreme court may otherwise direct.

HISTORY: Codes, 1942, § 1619; Laws, 1932, ch. 200.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts § 9.

§ 9-9-41. Court may be abolished in certain counties.

In any county in which there is a city of more than thirteen thousand six hundred inhabitants and less than fourteen thousand inhabitants, as shown by the next preceding regular federal census, and having a county court established by Section 9-9-1, the board of supervisors shall, on petition of not less than twenty per cent (20%) of the qualified electors of said county, call an election for the purpose of ascertaining whether said court shall be abolished. Said election shall be held in the manner provided by law for holding general elections and at least three weeks' notice thereof shall be given by publication in some newspaper having a general circulation within the county.

The tickets used at said election shall have on their face the following:

For abolishing the county court of ________ county ( )
Against abolishing the county court of ________ county ( )
and the voters shall vote by placing a cross mark after one of said propositions.

In the event a majority of the qualified electors of said county voting in said election vote in favor of the abolition of said court then the same shall immediately cease to exist and the clerk of the circuit court shall transfer all cases pending on the docket of said court. Those cases involving misdemeanors or amounts under two hundred dollars shall be transferred to the proper justice of the peace and those involving over two hundred dollars shall be transferred to the circuit court of the county.

In the event said county court is abolished as hereinabove provided, all executions or garnishments issued on judgment rendered by said court shall be returnable before the circuit court of the county and shall be disposed of just as if the judgment had been rendered by said circuit court.

HISTORY: Codes, 1942, § 1620; Laws, 1938, ch. 284; Laws, 1950, ch. 352.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts § 9.

§ 9-9-43. Legislative action or election required to abolish courts in certain counties.

In any county now having a county court established by Chapter 131 of the laws of 1926 and having only one judicial district therein and in which the assessed valuation of real and personal property has fallen below seventeen million dollars but exceeds fifteen million dollars according to the assessment of 1932, and in which the urban population exceeds the rural population, and having therein a municipality in excess of 15,000 population, according to the last federal census, said county court shall remain in existence until abolished by a direct act of the legislature or by an election as now provided by law.

HISTORY: Codes, 1942, § 1621; Laws, 1934, ch. 235.

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts § 9.

§ 9-9-45. When other counties become eligible for establishment or abolition of court.

When hereafter any county of the state shall become eligible by reason of the growth in population, in assessed valuation and the existence therein of a municipality of the number of inhabitants all as specified in Section 9-9-1 of this chapter, it shall be the duty of the Governor, upon the determination by him of the facts aforesaid, to issue his public proclamation establishing a county court in the said county, and calling an election on a date to be fixed in said proclamation for the election of a county judge. The term of office of a county judge elected under this section and Section 9-9-39 shall expire thereafter at the same time at which there expires the regular terms of circuit judges and chancellors. When in the last year of any four-year judicial period any county has fallen below the requirements of eligibility as stated in Section 9-9-1 of this chapter, it shall be the duty of the Governor so to ascertain and proclaim, thereupon after the expiration of the then four-year term, the county court shall cease to exist in such county, unless by an election held under the provisions of Section 9-9-39 the said court be retained or reestablished.

HISTORY: Codes, 1930, § 707; 1942, § 1622; Laws, 1926, ch. 131; brought forward without change, Laws, 2010, ch. 442, § 4, eff June 21, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the bringing forward without change of this section).

Editor's Notes — By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the bringing forward without change of this section by Laws of 2010, ch. 442.

CHAPTER 11.

JUSTICE COURTS

Sec.
9-11-1. Repealed.
9-11-2. Determination of number of justice court judges in each county.
9-11-3. Certification of successful completion of courses of training and continuing education and minimum competency examination conducted and administered by Mississippi Judicial College; exemption from competency examination.
9-11-4. Basic and continuing education courses for justice court judges; minimum competency examination; exemption from competency examination; remedial courses; costs and expenses.
9-11-5. Courtrooms; offices; insurance.
9-11-7. Oath of office and bond.
9-11-9. Civil jurisdiction; pecuniary interest in outcome of action.
9-11-10. Civil jurisdiction; prepayment of costs as prerequisite; penalties.
9-11-11. Uniform case record; certified copies of papers furnished to parties; destruction of closed files.
9-11-13. Entry to identify docket.
9-11-15. Regular terms of court; nonresident defendant; trial at reasonable time; court of record; power to punish for contempt; designation of at least one-half day per month as traffic court day; expunction of misdemeanor convictions.
9-11-17. Repealed.
9-11-18. Justice court clerk clearing account.
9-11-19. Collection and report of fines and penalties.
9-11-20. Service of process or writ outside of issuing county; sharing fees.
9-11-21. Receipt itemizing costs, fees and other payments made to clerk of justice court.
9-11-23. Remedy for money collected.
9-11-25. Delivery of books, records and papers of justice court judge leaving office or dying to justice court clerk.
9-11-27. Appointment of clerk; designation of powers; compliance with Section 9-1-46.
9-11-29. Clerk's certificate of completion of Justice Court Clerks Training Course; bond entered by clerk.
9-11-31. Board of supervisors to appoint justice court or municipal court judge to serve for justice court judge who is unable to serve for thirty consecutive days.
9-11-33. Correction of errors or mistakes in proceedings or records; setting aside proceedings or judgments for good cause.
9-11-35. Justice Court Collections Payment Program; purpose; funding of program.

§ 9-11-1. Repealed.

Repealed by Laws, 1982, ch. 423, § 6, eff from and after January 1, 1984.

§ 9-11-1. [Codes, Hutchinson's 1848, ch 50, art. 14 (1, 2); 1857, ch. 58, arts. 1, 2; 1871, § 1297; 1880, § 2185; 1892, § 2392; 1906, § 2721; Hemingway's 1917, § 2220; 1930, § 2069; 1942, § 1803; Laws, 1926, ch. 209; Laws, 1932, ch. 174; Laws, 1960, ch. 188; Laws, 1964, ch. 329, § 1; Laws, 1966, ch. 289, § 1;

Laws, 1968, ch. 339, § 1; Laws, 1974, ch. 497, § 1; Laws, 1975, ch. 340; Laws, 1981, ch. 471, § 7; Laws, 1982, ch. 423, § 6]

Editor's Notes — Former § 9-11-1 specified the number of justices of the peace districts in counties, and provided for elections and designation of positions.

§ 9-11-2. Determination of number of justice court judges in each county.

(1) From and after January 1, 1984, there shall be a competent number of justice court judges in each county of the state. The number of justice court judges for each county shall be determined as follows:

(a) In counties with a population, according to the latest federal decennial census, of thirty-five thousand (35,000) and less, there shall be two (2) justice court judges unless the board of supervisors, by resolution duly spread upon its minutes, finds that one (1) justice court judge is a competent number to adequately handle the needs of the citizens of the county.

(b) In counties with a population, according to the latest federal decennial census, of more than thirty-five thousand (35,000) and less than seventy thousand (70,000), there shall be three (3) justice court judges, unless the board of supervisors, by resolution duly spread upon its minutes, finds that two (2) is a competent number of justice court judges to adequately handle the needs of the citizens of the county.

(c) In counties with a population, according to the latest federal decennial census, of seventy thousand (70,000) and less than one hundred fifty thousand (150,000), there shall be four (4) justice court judges, unless the board of supervisors, by resolution duly spread upon its minutes, finds that three (3) is a competent number of justice court judges to adequately handle the needs of the citizens of the county.

(d) In counties with a population, according to the latest federal decennial census, of one hundred fifty thousand (150,000) and more, there shall be five (5) justice court judges, unless the board of supervisors, by resolution duly spread upon its minutes, finds that four (4) is a competent number of justice court judges to adequately handle the needs of the citizens of the county.

(2) The board of supervisors shall establish single member election districts in the county for the election of each of the justice court judges authorized and required to be elected for the county under the provisions of subsection (1) of this section, and one (1) justice court judge shall be elected for each district by the electors thereof. In any county authorized and required under the provisions of subsection (1)(a) of this section to provide for the election of two (2) justice court judges for the county in which there are two (2) judicial districts, the smaller of such judicial districts, according to population based upon the latest federal decennial census, shall comprise or shall be wholly encompassed within one (1) of such election districts.

(3)(a) Nothing in this section shall be construed to authorize or require more than five (5) justice court judges in any one (1) county from and after

January 1, 1984, nor to authorize or require an increase in the number of justice court judges for any county during the term of office of any justice court judge.

(b) Nothing in this section shall be construed to authorize or require a county to decrease the number of justice court judge positions in the county as of June 30, 2014.

HISTORY: Laws, 1974, ch. 497, § 2; Laws, 1975, ch. 423; Laws, 1981, ch. 471, § 8; Laws, 1983 2nd Ex Sess, ch. 7, § 1; Laws, 2014, ch. 515, § 1, eff from and after July 1, 2014.

Cross References — Provisions relative to compensation of justice court judges of a county where their number exceeds that authorized by § 9-11-2(1), see § 25-3-36.

Appointment of judge to serve for justice court judge who is unable to serve for thirty consecutive days, see § 9-11-31.

Provision that single member election districts for the election of constables shall be of the same number and shall have the same boundaries as districts established for justice court judges pursuant to this section, see § 19-19-2.

Provision that justice court judges shall be elected in 1987 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see §§ 23-15-291 et seq.

Rules governing practice and procedure in justice courts, see Uniform Rules of Procedure for Justice Court 1.00 et seq.

OPINIONS OF THE ATTORNEY GENERAL

There is apparently no law that would prohibit justice court judge from serving as municipal judge of more than one city in county; there in no statutory authority or guidelines for setting compensation of such judge, other than general rule that such compensation must be reasonable in relation to duties performed. Richardson, July 2, 1992, A.G. Op. #92-0481.

Section 9-11-15 authorizes justice court judge to hold court on Saturdays if business of court requires and clerk or deputy clerk must be present if it is necessary to issue process from bench. Tucker, Feb. 2, 1994, A.G. Op. #93-0997.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d (Rev), Justices of the Peace § 4.

CJS.

51 C.J.S., Justices of the Peace § 3.

Law Reviews.

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

§ 9-11-3. Certification of successful completion of courses of training and continuing education and minimum competency examination conducted and administered by Mississippi Judicial College; exemption from competency examination.

(1) Except as otherwise provided herein, no justice court judge elected for a full term of office commencing on or after January 1, 2012, shall exercise the judicial functions of his office or be eligible to take the oath of office until he has filed in the office of the chancery clerk the following two (2) certifications: (a) a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center; and (b) a certificate of successful completion of a minimum competency examination administered by the Mississippi Judicial College of the University of Mississippi Law Center within six (6) months of the beginning of the term for which such justice is elected. A justice court judge who has completed the course of training and education, passed the minimum competency examination, and has satisfied his annual continuing education course requirements, and who is then elected for a succeeding term of office subsequent to the initial term for which he completed the training course, shall not be required to repeat the basic training and education course upon reelection but shall be subject to the continuing education requirements.

(2) In addition to meeting the requirements of subsection (1) of this section, after taking office, each justice court judge shall be required to file annually in the office of the chancery clerk a certificate of completion of a course of continuing education conducted by the Mississippi Judicial College.

(3) The requirements for obtaining each of the certificates in subsections (1) and (2) of this section shall be as provided in Section 9-11-4.

(4) Upon the failure of any justice court judge to file with the chancery clerk the certificates of completion as provided in subsections (1) and (2) of this section, such justice court judge shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to compensation for the period of time during which such certificates remain unfiled. If a justice court judge has not filed the required certifications within eight (8) months of the inception of the term, that justice court judge shall forfeit his office, his position shall be declared vacant, and the resulting vacancy shall be filled as provided by Section 23-15-839.

(5) The competency examination requirements in Sections 9-11-3 and 9-11-4 shall not apply to any sitting justice court judges as of July 24, 2008.

HISTORY: Codes, 1942, § 1803.2; Laws, 1964, ch. 330; Laws, 1981, ch. 471, § 15; Laws, 1982, ch. 423, § 28; Laws, 1989, ch. 448, § 1; Laws, 1991, ch. 321, § 1; Laws, 2008, ch. 319, § 2; Laws, 2011, ch. 367, § 1, eff July 5, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

On July 24, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 319, Laws of 2008.

By letter dated July 5, 2011, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Chapter 367, Laws of 2011.

§ 9-11-4. Basic and continuing education courses for justice court judges; minimum competency examination; exemption from competency examination; remedial courses; costs and expenses.

(1)(a) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and conduct courses of training for basic and continuing education for justice court judges of this state. The basic course of training shall be known as the "Justice Court Judge Training Course" and shall consist of eighty (80) hours of training. The continuing education course shall be known as the "Continuing Education Course for Justice Court Judges," and shall consist of twenty-four (24) hours of training. The content of the basic and continuing education courses and when and where such courses are to be conducted shall be determined by the Judicial College. The Judicial College shall issue certificates of completion to those justice court judges who complete such courses.

(b) The Mississippi Judicial College of the University of Mississippi Law Center shall prepare and administer a minimum competency examination, as approved by the Mississippi Supreme Court, upon completion of the required basic course of training for justice court judges. If an elected justice court judge fails to complete the examination or fails the examination, there shall be a remedial twenty-four-hour course to be followed by a second opportunity for the justice court judge to achieve a passing score on the minimum competency examination.

(2) All costs and expenses for preparing and conducting the basic and continuing education courses, the remedial basic course, and the minimum competency examination provided for in subsection (1) of this section shall be paid out of any funds which are made available to the Judicial College upon authorization and appropriation by the Legislature.

(3) The competency examination requirements in Sections 9-11-3 and 9-11-4 shall not apply to any sitting justice court judge as of July 24, 2008.

HISTORY: Laws, 1981, ch. 471, § 16; Laws, 1982, ch. 423, § 28; Laws, 2008, ch. 319, § 3; Laws, 2011, ch. 367, § 2, eff July 5, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

On July 24, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 319, Laws of 2008.

By letter dated July 5, 2011, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Chapter 367, Laws of 2011.

Cross References — Provisions of this section governing issuance of certificates of completion of justice court judges training and education courses, required to be filed by justice court judges, see § 9-11-3.

§ 9-11-5. Courtrooms; offices; insurance.

(1) The justice court judges shall be provided courtrooms by the county and all trials shall be held therein. Such courtrooms shall be in the county courthouse, county office building or any other building within the county deemed appropriate by the board of supervisors.

(2) The county shall provide office space and furnish each justice court office and provide necessary office supplies.

(3) The board of supervisors of each county may secure insurance coverage to protect the office of the justice court clerk against losses due to theft or robbery.

HISTORY: Codes, 1942, § 1803.3; Laws, 1964, ch. 332; Laws, 1979, ch. 476, § 2; Laws, 1981, ch. 471, § 9; Laws, 1982, ch. 423, § 28; Laws, 1986, ch. 367; Laws, 2008, ch. 319, § 4; Laws, 2008, ch. 553, § 2, eff from and after July 1, 2008.

Joint Legislative Committee Note — Section 4 of ch. 319, Laws of 2008, effective from and after July 24, 2008 (the date the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Chapter 319, Laws of 2008), amended this section. Section 2 of ch. 553, Laws of 2008, effective July 1, 2008 (approved May 10, 2008), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 553, Laws of 2008, which contains language that specifically provides that it supersedes § 9-11-5 as amended by Chapter 319, Laws of 2008.

Editor's Notes — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the 'Justice Court Reform Act of 2008.'

OPINIONS OF THE ATTORNEY GENERAL

Preliminary hearing does not fall under trial court and therefore Justice Court Judge may conduct preliminary hearing where location of hearing is reasonable, i.e. jail or courthouse; Justice Court Clerk is not mandated by statute to notify defendant or witnesses of upcoming preliminary hearing. Carter, Feb. 12, 1990, A.G. Op. #90-0076.

Board of supervisors has clear statutory duty to provide adequate court facilities for each county. Ford, Jan. 12, 1994, A.G. Op. #93-0959.

The board of supervisors is responsible for providing a courtroom and office space for the county justice court; if the board fails to do so, a writ of mandamus, requiring the board to fulfill their statutory duties, may be sought in circuit court. Smith Aug. 1, 1997, A.G. Op. #97-0462.

The county board of supervisors has discretion in setting the office hours during which the justice court clerk's office will be open with a clerk present and in providing for the location of the justice court offices. Reynolds, Nov. 27, 2000, A.G. Op. #2000-0641.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d (Rev), Justices of the Peace § 15.

CJS.
51 C.J.S., Justices of the Peace § 60.

§ 9-11-7. Oath of office and bond.

Every person elected a justice court judge shall, before he enters on the duties of the office, take the oath of office prescribed by Section 155 of the Constitution, and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law and in the same manner as other county officers, in a penalty not less than Fifty Thousand Dollars ($50,000.00); and any party interested may proceed on such bond in a summary way, by motion in any court having jurisdiction of the same, against the principal and surety, upon giving five (5) days' previous notice.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art 7 (1); 1857, ch. 58, art. 3; 1871, § 1298; 1880, § 2186; 1892, § 2393; 1906, § 2722; Hemingway's 1917, § 2221; 1930, § 2070; 1942, § 1804; Laws, 1986, ch. 458, § 12; Reenacted, Laws, 1989, ch. 342, § 1; Laws, 2009, ch. 467, § 2, eff from and after July 1, 2009.

Editor's Notes — Section 48, Chapter 458, Laws, 1986, provided that § 9-11-7 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws, 1986, by deleting the date for repeal.

JUDICIAL DECISIONS

1. In general.
A justice of the peace and his official bond are liable for damages from his false certificate of acknowledgment. Hodges v. Mills, 139 Miss. 347, 104 So. 165, 1925 Miss. LEXIS 155 (Miss. 1925).

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d (Rev), Justices of the Peace §§ 5, 36.

3B Am. Jur. Legal Forms 2d, Bonds § 43:18.

§ 9-11-9. Civil jurisdiction; pecuniary interest in outcome of action.

Justice court judges shall have jurisdiction of all actions for the recovery of debts or damages or personal property, where the principal of the debt, the amount of the demand, or the value of the property sought to be recovered shall not exceed Three Thousand Five Hundred Dollars ($3,500.00).

The justice court judges shall have no pecuniary interest in the outcome of any action once suit has been filed.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art 2 (9); 1857, ch 58, art. 7; 1871, § 1302; 1880, § 2190; 1892, § 2394; 1906, § 2723; Hemingway's 1917, § 2222; 1930,

§ 2071; 1942, § 1805; Laws, 1964, ch. 333; Laws, 1977, ch. 308; Laws, 1981, ch. 471, § 4; Laws, 1985, ch. 478, § 1; Laws, 1986, ch. 365; Laws, 1995, ch. 573, § 1; Laws, 2008, ch. 319, § 5, eff July 24, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws of 2008, ch. 319, § 1, provides:

"SECTION 1. This act shall be known as the "Justice Court Reform Act of 2008."

On July 24, 2008, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 319, Laws of 2008.

Cross References — Civil practice and procedure before justice court, see § 11-9-101 et seq.

Transfer of case where court has subject matter jurisdiction but not venue, see § 11-11-17.

Partition of personalty by county court or justice court, see § 11-21-73.

Trial of right of property in justice court, see § 11-23-25 et seq.

Unlawful entry and detainer proceedings before justice court judge, see § 11-25-1 et seq.

Attachment at law against debtors, see § 11-33-1 et seq.

Garnishment proceedings, see § 11-35-1 et seq.

As to action of replevin, see § 11-37-101 et seq.

Jurisdiction of justice court in proceeding to secure a confiscation of property seized under the tobacco tax law, see § 27-69-55.

Jurisdiction of justice court in Mississippi marine conservation commission cases, see § 49-15-65.

Proceeding under justice courts, see § 85-7-265.

Jurisdiction of justice court of claims for salvage services, see § 89-17-21.

Jurisdiction of justice court over criminal cases, see § 99-33-1.

Imposition and amount of restitution authorized by justice court, see § 99-37-3.

JUDICIAL DECISIONS

ANALYSIS

1. Jurisdiction in general.
2. Amount in controversy.
3. —Interest, costs and damages.
4. —Attorney fees.
5. Consolidation of suits.
6. Joinder of causes of action.
7. Splitting or dividing cause of action.
8. Claimant's issue.
9. Replevin.
10. Appeal.

1. Jurisdiction in general.

Mississippi justice courts and the circuit courts shared concurrent jurisdiction in matters in which the amount in controversy exceeded $200 but not $2,500. Arant v. Hubbard, 824 So. 2d 611, 2002 Miss. LEXIS 257 (Miss. 2002).

The appearance of the defendant before a justice of the peace cures a defective service of summons. Helmer Bros. v. Hastings, 142 Miss. 403, 107 So. 551, 1926 Miss. LEXIS 95 (Miss. 1926).

A justice of the peace may suspend business to try a criminal case and render a valid judgment by default at the same term by resuming the business of his court. Welch v. Hannie, 112 Miss. 79, 72 So. 861, 1916 Miss. LEXIS 69 (Miss. 1916).

Under a municipal charter which provides for an additional justice of the peace for the town, the civil jurisdiction of such justice under the general law is not limited by a provision of the charter that the mayor and councilmen may fix penalties for violations of the charter or ordinances, the offense to be ascertained by trial before the mayor or justice of the peace for the town. Matthews v. Cotton, 83 Miss. 472, 35 So. 937, 1903 Miss. LEXIS 66 (Miss. 1903).

The civil jurisdiction of justices of the peace was conferred by constitutional grant and not by legislation. Illinois C. R. Co. v. Brookhaven Mach. Co., 71 Miss. 663, 16 So. 252, 1893 Miss. LEXIS 87 (Miss. 1893).

The jurisdiction embraces suits "founded on any penal statute," although these words, which appear in the corresponding section of Code 1857 p. 405, were not brought forward in the Codes of 1871, 1880 and 1892. Western Union Tel. Co. v. Sullivan, 70 Miss. 447, 12 So. 460, 1892 Miss. LEXIS 127 (Miss. 1892).

The justice's jurisdiction is not limited by the Constitution to actions on contracts. Bell v. West Point, 51 Miss. 262, 1875 Miss. LEXIS 43 (Miss. 1875); Higgins v. Deloach, 54 Miss. 498, 1877 Miss. LEXIS 34 (Miss. 1877).

2. Amount in controversy.

The justice court's default judgment in an eviction action awarding the landlord attorney fees, filing fees, and possession of its commercial property did not exceed its jurisdiction because the total monetary amount rendered in the justice court's default judgment did not exceed possession, court costs, and attorney fees, nor did it exceed the jurisdictional limits of the justice court. To argue that it required anything more—accelerated rents—and to attempt to incorporate a separate action filed in circuit court that was not final was not well taken. FSG Southaven LLC v. Makowsky Ringel Greenberg LLC, — So. 3d —, 2019 Miss. App. LEXIS 324 (Miss. Ct. App. July 16, 2019).

Jurisdiction of justice of peace is determined by amount demanded in good faith in pleadings. Simpson County v. Furlow, 160 Miss. 232, 134 So. 146, 1931 Miss. LEXIS 184 (Miss. 1931).

Where plaintiff filed statement charging defendant with $200 for killing horse and $10 for killing yearling, and judgment was entered for $110, justice of the peace had no jurisdiction. Simpson County v. Furlow, 160 Miss. 232, 134 So. 146, 1931 Miss. LEXIS 184 (Miss. 1931).

Test as to jurisdictional amount in controversy is determined at time of filing suit. Catchot v. Russell, 160 Miss. 330, 134 So. 140, 1931 Miss. LEXIS 180 (Miss. 1931).

The amount honestly claimed by plaintiff determines jurisdiction. Betts v. Falgo, 126 Miss. 252, 88 So. 636, 1921 Miss. LEXIS 31 (Miss. 1921).

The amount that a tenant may owe for the rent of a place does not determine the jurisdiction of the justice of the peace to dispossess said tenant on the ground he is in default of rent. Simpson v. Boykin, 118 Miss. 701, 79 So. 852, 1918 Miss. LEXIS 123 (Miss. 1918), overruled, Jackson v. Schwartz, 240 So. 2d 60, 1970 Miss. LEXIS 1267 (Miss. 1970).

A tenant remanding the case of his landlord to the justice court because of want of jurisdiction cannot afterwards in the same case be heard to contend that the amount sued for is over $200.00. Weatherall v. Brown, 113 Miss. 887, 74 So. 765, 1917 Miss. LEXIS 161 (Miss. 1917).

Items denied by the defendant and eliminated from the account which reduces amount originally claimed below $200.00 gives the justice of the peace jurisdiction of the case. Kantrovitz v. McNeill, 110 Miss. 873, 71 So. 13, 1916 Miss. LEXIS 220 (Miss. 1916).

The value of the property honestly claimed in the affidavit determines the jurisdiction of the justice of the peace regardless of the findings of the jury as to its value. Johnson v. Tabor, 101 Miss. 78, 57 So. 365, 1911 Miss. LEXIS 101 (Miss. 1911).

A compromise with one carrier as codefendant, which reduces the amount sued for below the jurisdiction of the circuit court, deprives that court of jurisdiction. Mobile, J. & K. C. R. Co. v. Hitt & Rutherford, 99 Miss. 679, 55 So. 484, 1911 Miss. LEXIS 237 (Miss. 1911).

The demand, where honestly made, fixes and determines the amount in controversy. Fenn v. Harrington, 54 Miss. 733, 1877 Miss. LEXIS 91 (Miss. 1877); Ross v. Natchez, J. & C. R. Co., 61 Miss. 12, 1883 Miss. LEXIS 61 (Miss. 1883); Griffin v. McDaniel, 63 Miss. 121, 1885 Miss. LEXIS 29 (Miss. 1885).

The principal of the debt at the time suit is brought, after deducting credits if any, is the test of jurisdiction. Martin v. Harden, 52 Miss. 694, 1876 Miss. LEXIS 276 (Miss. 1876).

3. —Interest, costs and damages.

Interest is not to be included in determining "principal amount in controversy" on question whether circuit court has jurisdiction. Catchot v. Russell, 160 Miss. 330, 134 So. 140, 1931 Miss. LEXIS 180 (Miss. 1931).

The principal amount in controversy, exclusive of the interest, determines jurisdiction. Wainwright v. Atkins, 104 Miss. 438, 61 So. 454, 1913 Miss. LEXIS 49 (Miss. 1913).

In suits on penal bonds, jurisdiction is determined by the amount of damages honestly claimed. Shattuck v. Miller, 50 Miss. 386, 1874 Miss. LEXIS 71 (Miss. 1874); State v. Luckey, 51 Miss. 528, 1875 Miss. LEXIS 74 (Miss. 1875).

In computing the amount in controversy, costs, damages and interest are excluded. N. O., J. & G. N. R. Co. v. Evans, 49 Miss. 785, 1874 Miss. LEXIS 13 (Miss. 1874); Jackson v. Whitfield, 51 Miss. 202, 1875 Miss. LEXIS 35 (Miss. 1875).

4. —Attorney fees.

Where agreed percentage of principal and interest added as attorney's fee to face of note, excluding interest, exceeded $200, circuit court had jurisdiction, attorney's fee being part of "principal amount in controversy." Catchot v. Russell, 160 Miss. 330, 134 So. 140, 1931 Miss. LEXIS 180 (Miss. 1931).

The stipulation in a promissory note for 10% added for attorney's fees makes the attorney part of the cause of action in determining the amount sued for. Parks v. Granger, 96 Miss. 503, 51 So. 716, 1910 Miss. LEXIS 189 (Miss. 1910).

5. Consolidation of suits.

A justice of the peace cannot consolidate separate and distinct suits, if, when united, the demand exceeds two hundred dollars. Louisville & N. R. Co. v. McCollister, 66 Miss. 106, 5 So. 695, 1888 Miss. LEXIS 70 (Miss. 1888).

6. Joinder of causes of action.

Plaintiff need not embrace in the same suit independent causes of action, though all may be due. Ash v. W. A. Lee & Co., 51 Miss. 101, 1875 Miss. LEXIS 20 (Miss. 1875); Pittman v. Chrisman, 59 Miss. 124, 1881 Miss. LEXIS 82 (Miss. 1881); Drysdale v. Biloxi Canning Factory, 67 Miss. 534, 7 So. 541, 1890 Miss. LEXIS 124 (Miss. 1890); McLendon v. Pass, 66 Miss. 110, 5 So. 234, 1888 Miss. LEXIS 71 (Miss. 1888); Morris v. Shryock & Rowland, 50 Miss. 590, 1874 Miss. LEXIS 98 (Miss. 1874).

7. Splitting or dividing cause of action.

A single demand cannot be split in order to confer jurisdiction. Vicksburg Waterworks Co. v. Ford, 97 Miss. 198, 52 So. 208, 1910 Miss. LEXIS 219 (Miss. 1910).

A suit for damages for two separate mules killed at the same time cannot be split so as to give the justice of the peace jurisdiction. Yazoo & M. V. R. Co. v. Payne, 92 Miss. 126, 45 So. 705, 1907 Miss. LEXIS 21 (Miss. 1907).

But where one ships freight, part belonging to him and part to others, although under a single contract, he may sue in tort in a justice's court for injury to his own property by the negligence of the carrier if the sum does not exceed two hundred dollars. Waters v. Mobile & O. R. Co., 74 Miss. 534, 21 So. 240, 1896 Miss. LEXIS 163 (Miss. 1896).

An account, though embracing various items, cannot be divided so as to give jurisdiction. Grayson v. Williams, 1 Miss. 298, 1827 Miss. LEXIS 16 (Miss. 1827); Pittman v. Chrisman, 59 Miss. 124, 1881 Miss. LEXIS 82 (Miss. 1881).

8. Claimant's issue.

The justices of the peace have jurisdiction to try a claimant's issue although the value of the property exceeds two hundred dollars. Bernheimer v. Martin, 66 Miss. 486, 6 So. 326, 1889 Miss. LEXIS 133 (Miss. 1889).

Pittman v. Chrisman, 59 Miss. 124, 1881 Miss. LEXIS 82 (Miss. 1881).

9. Replevin.

The affidavit in replevin determines the jurisdiction of the court so far as it concerns the value of the property sued for, unless the plaintiff knowingly undervalued or overvalued it for jurisdictional purposes; Code 1892 § 649 (Code 1906 § 706, Code 1942 § 485), providing a penalty for suing for more than is due for jurisdictional purposes, applies to justice's courts.

Ball, Brown & Co. v. Sledge, 82 Miss. 749, 35 So. 447, 1903 Miss. LEXIS 203 (Miss. 1903).

10. Appeal.

In declining to follow Melikian v. Avent (N.D. Miss. 1969) 300 F Supp 516, the reviewing court held that the civil side of the Mississippi fee system did not comport with due process, in light of the record which supported the inference that creditors would file more frequently in the courts of the judges who tended to favor the plaintiffs, and where there was testimony to this effect, and further testimony to the effect that judges knew and understood this to be the case, and where the undisputed evidence showed that cases were unevenly distributed throughout the judges in the various counties. Brown v. Vance, 637 F.2d 272, 1981 U.S. App. LEXIS 20552 (5th Cir. Miss. 1981).

On appeal to the circuit court if the justice court had jurisdiction the circuit court will have. Hobbs Auto Co. v. Jones, 140 Miss. 610, 105 So. 764, 1925 Miss. LEXIS 296 (Miss. 1925).

Items accruing after suit are improperly added to account before justice of the peace, but such conduct will not cause dismissal of the appeal. Hobbs Auto Co. v. Jones, 140 Miss. 610, 105 So. 764, 1925 Miss. LEXIS 296 (Miss. 1925).

A void judgment by default before a justice of the peace may be appealed from and on appeal the judgment set aside where there was no appearance of defendant in the justice court. Mississippi C. R. Co. v. Calhoun, 140 Miss. 289, 105 So. 519, 1925 Miss. LEXIS 261 (Miss. 1925).

And on appeal to the circuit court the latter may render a judgment for rent in excess of $200.00. Stollenwerck v. Eure, 119 Miss. 854, 81 So. 594, 1919 Miss. LEXIS 51 (Miss. 1919).

The execution of an appeal bond does not preclude the appellant on appeal from attacking the judgment appealed from for want of jurisdiction of the justice. Adams v. Fidelity Mut. L. Ins. Co., 94 Miss. 433, 49 So. 119, 1909 Miss. LEXIS 368 (Miss. 1909).

Where defendant in replevin action retained the several articles of property involved under bond, and, by consent, only part of the property was adjudged restored to plaintiff, defendant's appeal from justice court concerns only the rights of the parties to the property adjudged to be restored. Mellini v. Duly, 88 Miss. 219, 40 So. 546, 1906 Miss. LEXIS 117 (Miss. 1906).

OPINIONS OF THE ATTORNEY GENERAL

Justice court may not order restitution of more than $1,000, court's current jurisdictional limit, for medical bills and similar expenses arising from assault. Pearson, Sept. 16, 1992, A.G. Op. #92-0611.

If defendant is charged with misdemeanor involving fraud, found guilty and wishes to make restitution, Justice Court is limited to $1,000.00 restitution, even though amount of fraud is above $1,000.00. Phillips Sept. 9, 1993, A.G. Op. #93-0565.

Attorney fees are included in the amount of the demand and therefore are included in the jurisdictional limit in justice court. Cruber, November 20, 1998, A.G. Op. #98-0712

RESEARCH REFERENCES

ALR.

Disqualification of judge, justice of the peace, or similar judicial officer for pecuniary interest in fines, forfeitures, or fees payable by litigants. 72 A.L.R.3d 375.

Judge's previous legal association with attorney connected to current case as warranting disqualification. 85 A.L.R.4th 700.

Am. Jur.

47 Am. Jur. 2d (Rev), Justices of the Peace §§ 10 et seq.

CJS.
51 C.J.S., Justices of the Peace §§ 26, 42 et seq.

§ 9-11-10. Civil jurisdiction; prepayment of costs as prerequisite; penalties.

No justice of the peace court shall have jurisdiction over any civil suit attempted to be filed therein unless and until all legally required court costs, as set out, but not restricted to, Sections 25-7-25 and 25-7-27, Mississippi Code of 1972, are deposited with the court. The justice of the peace shall not file, docket, issue process, or otherwise assume jurisdiction until such costs shall have been paid.

Any violation shall constitute a misdemeanor wherein the county court, or in the absence of a county court, the circuit court shall have jurisdiction. Upon conviction the justice of the peace shall be fined not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00).

HISTORY: Laws, 1974, 1974, ch. 329, eff from and after July 1, 1974.

Editor's Notes — Pursuant to Miss. Const. Art. 6 § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Money paid into the justice court clerk clearing account, see § 9-11-18.

Payment of costs and fees in advance to clerk of justice court, see § 25-7-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d (Rev), Justices of the Peace §§ 10 et seq.

CJS.
51 C.J.S., Justices of the Peace §§ 26, 42 et seq.

§ 9-11-11. Uniform case record; certified copies of papers furnished to parties; destruction of closed files.

It shall be the duty of the justice court to keep a uniform case record developed by the Attorney General on each case, civil and criminal, brought before it. Upon disposition, each record shall be signed by the justice court judge. It shall be the duty of a justice court, when required, to furnish to either party a certified copy of all proceedings, and of all papers and process relating thereto, in any action before it. Closed civil and criminal files may be destroyed after seven and one-half (7½) years with written approval from the Director of the Department of Archives and History.

HISTORY: Codes, Hutchinson's 1848, ch 50, art. 2 (12); 1857, ch. 58, art. 14; 1871, § 1308; 1880, § 2193; 1892, § 2397; 1906, § 2726; Hemingway's 1917, § 2225; 1930, § 2074; 1942, § 1808; Laws, 1981, ch. 471, § 17; Laws, 1982, ch. 423, § 28; Laws, 1985, ch. 440, § 2; Laws, 1998, ch. 439, § 2, eff from and after July 1, 1998.

Cross References — Entry to identify docket, see § 9-11-13.

Entry on justice court docket of clerks appointed by justice court judge, see § 9-11-27.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Effect of requiring docket entries.
3. Evidence.

1. In general.

Judgment entered at regular term of justice court, based on return of process at special day with continuance to regular term, was not void. McCormick Motor Car Co. v. McDonald, 153 Miss. 409, 121 So. 121, 1929 Miss. LEXIS 40 (Miss. 1929).

Court of justice of the peace is court of record. Strickland v. Webb, 152 Miss. 421, 120 So. 168, 1928 Miss. LEXIS 269 (Miss. 1928).

Justice of the peace had no authority to enter judgment after his term of office expired. Strickland v. Webb, 152 Miss. 421, 120 So. 168, 1928 Miss. LEXIS 269 (Miss. 1928).

It is a copy of the entries on this docket which the justice is to transmit, certified, to the circuit court on appeal. Hughston v. Cornish, 59 Miss. 372, 1882 Miss. LEXIS 119 (Miss. 1882).

2. Effect of requiring docket entries.

A judgment written on a slip of paper that is no part of the docket of the justice of the peace is void. A justice of the peace must write his judgments in his docket. Board of Sup'rs v. Steele, 124 Miss. 340, 86 So. 810, 1920 Miss. LEXIS 514 (Miss. 1920).

An execution on a judgment which does not show service of process on defendant and is by default should be quashed and garnishment on the judgment discharged on appeal. Carrollton Hardware & Implement Co. v. Marshall, 117 Miss. 224, 78 So. 7, 1918 Miss. LEXIS 166 (Miss. 1918), overruled, Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

But if a justice enters his judgment on a loose piece of paper and after his court adjourns transfers the entry to his docket, the judgment is not invalid. Holley v. State, 74 Miss. 878, 21 So. 923, 1897 Miss. LEXIS 69 (Miss. 1897).

3. Evidence.

A judge violated § 9-11-11 and Canons 1, 2A, 2B, 3A(1), 3A(4), 3A(5), and 3B(1) where he failed to promptly dispose of the court's business and allowed his relationship with the court clerk to affect his duties, and where he engaged in ex parte communications which required his recusal in 44 cases within a short period of time. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171, 1998 Miss. LEXIS 448 (Miss. 1998).

OPINIONS OF THE ATTORNEY GENERAL

A signed, written, case record is required only upon disposition of the case, i.e., when a judgment or order is entered; however, the docket must be available and open to inspection by the public at all times whether in printed form or by computer. Watts, Dec. 18, 1991, A.G. Op. #91-0910.

Justice court statutes do not mention "judgment form" other than case record that justice court judge is required, under Miss. Code Section 9-11-11, to sign upon disposition of each case. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Clerk and deputy clerk are duty-bound to record all actions but it is ultimate responsibility of justice court judge to ensure correctness of disposition before signing off on it. Tucker, Feb. 2, 1994, A.G. Op. #94-0997.

Based on Sections 9-11-11 and 63-9-29 [Repealed], a justice court clerk has the authority to collect a fine on a traffic ticket in advance and in lieu of the defendant attending court. The judge should sign the docket book if he makes a determination that the fine was properly paid. Spencer, August 2, 1996, A.G. Op. #96-0493.

Although a uniform case record developed by the Attorney General must be maintained and signed by the justice court judge upon the disposition of each case, the justice court docket need not be maintained in paper form, but may instead be maintained on computer so long as the public has access to the docket by way of printed copies or access to the computer itself. Mullen, Aug. 22, 1997, A.G. Op. #97-0534.

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d (Rev), Justices of the Peace §§ 15 et seq.

CJS.
51 C.J.S., Justices of the Peace § 128.

§ 9-11-13. Entry to identify docket.

Each justice of the peace shall, at the beginning and in front of all his entries in his docket, make and subscribe substantially the following entry, to-wit:

"A docket of proceedings in matters civil and criminal before ________, a justice of the peace of the county of ________, in the State of Mississippi, in District No. ________ of said county, for the election of justices of the peace. Witness my signature.

____

Justice of the Peace."

HISTORY: Codes, 1880, § 2239; 1892, § 2398; 1906, § 2727; Hemingway's 1917, § 2226; 1930, § 2075; 1942, § 1809.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

JUDICIAL DECISIONS

1. In general.
Failure of judgment of justice of peace, on appeal to circuit court, to set forth judicial district, did not invalidate it. Dotson v. State, 156 Miss. 365, 126 So. 38, 1930 Miss. LEXIS 180 (Miss. 1930).

RESEARCH REFERENCES

Am. Jur.
47 Am. Jur. 2d (Rev), Justices of the Peace §§ 15 et seq.

§ 9-11-15. Regular terms of court; nonresident defendant; trial at reasonable time; court of record; power to punish for contempt; designation of at least one-half day per month as traffic court day; expunction of misdemeanor convictions.

(1) Justice court judges shall hold regular terms of their courts, at such

times as they may appoint, not exceeding two (2) and not less than one (1) in every month, at the appropriate justice court courtroom established by the board of supervisors; and they may continue to hold their courts from day to day so long as business may require; and all process shall be returnable, and all trials shall take place at such regular terms, except where it is otherwise provided; but where the defendant is a nonresident or transient person, and it shall be shown by the oath of either party that a delay of the trial until the regular term will be of material injury to him, it shall be lawful for the judge to have the parties brought before him at any reasonable time and hear the evidence and give judgment or where the defendant is a nonresident or transient person and the judge and all parties agree, it shall be lawful for the judge to have the parties brought before him on the day a citation is made and hear the evidence and give judgment. Such court shall be a court of record, with all the power incident to a court of record, including power to fine in the amount of fine and length of imprisonment as is authorized for a municipal court in Section 21-23-7(11) for contempt of court.

(2)(a) In counties with a population of less than one hundred fifty thousand (150,000), each justice court shall designate at least one-half (½) day each month as a traffic court day, sufficient to handle the traffic violations docket of that court, and shall notify all appropriate law enforcement agencies of the date or dates. On the day or days so designated, the justice court shall give priority to all cases involving traffic violations.

(b) In counties with a population of one hundred fifty thousand (150,000) or more, each justice court shall designate at least one (1) day each month as a traffic court day, sufficient to handle the traffic violations of that court, and shall notify all appropriate law enforcement agencies of the date or dates. On the day or days so designated, the justice court shall give priority to all cases involving traffic violations. The one (1) day may be one (1) whole day or it may be divided into half days as long as one-half (½) day is held in the morning and one-half (½) day is held in the afternoon, in the discretion of the court.

(3) The justice court may, in its discretion, upon prior notice to the county prosecutor and upon a showing in open court of rehabilitation, good conduct for a period of two (2) years since the last conviction in any court and that the best interest of society would be served, order the record of conviction of a person of any or all misdemeanors in that court expunged, and upon so doing, such person thereafter legally stands as though he or she had never been convicted of the misdemeanor(s) and may lawfully so respond to any query of prior convictions. This order of expunction does not apply to the confidential records of law enforcement agencies and has no effect on the driving record of a person maintained under Title 63, Mississippi Code of 1972, or any other provision of said Title 63.

(4) Notwithstanding the provisions of subsection (3) of this section, a person who was convicted in justice court of a misdemeanor before reaching his twenty-third birthday, excluding conviction for a traffic violation, and who is a first offender, may utilize the provisions of Section 99-19-71, to expunge such misdemeanor conviction.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 10 (5); 1857, ch. 58, art. 9; 1871, § 1309; 1880, § 2194; 1892, § 2399; 1906, § 2728; Hemingway's 1917, § 2227; 1930, § 2076; 1942, § 1810; Laws, 1981, ch. 471, § 10; Laws, 1982, ch. 423, § 28; Laws, 1990, ch. 349, § 1; Laws, 1993, ch. 344, § 1; Laws, 2010, ch. 500, § 1; Laws, 2016, ch. 406, § 1, eff from and after July 1, 2016.

Cross References — Location of courtrooms of justice court judges, see § 9-11-5. Trial without delay for nonresident or transient defendants, see § 11-9-105.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Place of holding trial.
3. Time for holding trials; regular terms.
4. —Consent of parties.
5. —Nonresident or transient persons.
6. Notice of trial; service of process.

1. In general.

A justice court is a "court of record" as contemplated by § 99-15-17; thus, appointed counsel who was representing indigent defendants at preliminary hearings in justice court was not limited to a fee of $200 per case plus out-of-pocket expenses. Gibson v. Board of Supervisors, 656 So. 2d 312, 1995 Miss. LEXIS 275 (Miss. 1995).

A justice of the peace court is a court of record and has inherent power to correct clerical errors at any time and to make the judgment entry correspond with the judgment rendered, and this power exists in criminal prosecutions as well as in civil cases. Kitchens v. State, 253 Miss. 734, 179 So. 2d 13, 1965 Miss. LEXIS 1040 (Miss. 1965).

Circuit court has jurisdiction of both subject-matter and parties, on appeal with supersedeas, from default judgment by justice of the peace, in summary proceeding under Code 1942 § 948, to obtain possession of real property rendered on invalid service of process, although justice of the peace had jurisdiction only of subject-matter when default judgment was rendered. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Neither justice of the peace, nor circuit court on appeal, in proceeding under Code 1942 § 948, have any jurisdiction to make final and conclusive adjudication of title to property involved. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

The rule that continuances rest in the sound discretion of the trial court, subject to review upon appeal only for abuse of discretion, cannot apply to courts of justices of the peace for the reason that upon appeal to the circuit court such cases are tried there de novo. Gardner v. Price, 199 Miss. 809, 25 So. 2d 459, 1946 Miss. LEXIS 249 (Miss. 1946).

Court of justice of peace is court of record and of general jurisdiction. Simpson v. Phillips, 164 Miss. 256, 141 So. 897, 1932 Miss. LEXIS 208 (Miss. 1932).

The presumption of law is that justice of peace court, as a court of record, had sufficient proof before it before rendering judgment. Simpson v. Phillips, 164 Miss. 256, 141 So. 897, 1932 Miss. LEXIS 208 (Miss. 1932).

2. Place of holding trial.

A justice of the peace whose district is partly in two circuit court districts of the county may hold his court in either or both districts and will have entire jurisdiction of persons within his district, but appeals from his court to the circuit court must be to the circuit court of the district in which the suit is tried. Woods v. Speer, 127 Miss. 593, 90 So. 322, 1921 Miss. LEXIS 262 (Miss. 1921).

Where a justice of the peace has two regular places in his district and alternates in holding his terms of court on certain days at specific places, a writ of garnishment on judgment rendered at one place may be returnable to the next regular term of his court at said place, although a regular intervening term of court may be held at the other place. Edwards v. Kingston Lumber Co., 92

Miss. 598, 46 So. 69, 1908 Miss. LEXIS 207 (Miss. 1908).

A justice must hold his court within the district for which he was elected and is without jurisdiction to hold it elsewhere. State v. Tate, 77 Miss. 469, 27 So. 619, 1899 Miss. LEXIS 88 (Miss. 1899).

Perjury cannot be predicated on false swearing before a justice assuming to hold court without his district. State v. Tate, 77 Miss. 469, 27 So. 619, 1899 Miss. LEXIS 88 (Miss. 1899).

3. Time for holding trials; regular terms.

Party summoned to appear in justice court on named date is subject to default at regular term after continuance of case thereto. McCormick Motor Car Co. v. McDonald, 153 Miss. 409, 121 So. 121, 1929 Miss. LEXIS 40 (Miss. 1929).

Although a justice may continue to hold court from day to day following his regular court day, so long as business may require, he must hold regular terms, and an adjournment of his court from a regular court day to a day other than his next regular court day on the mistaken idea that the day of adjournment is a legal holiday is unauthorized and a judgment by default rendered on the day to which he so adjourned is void. Alabama G. S. R. Co. v. Dalton, 86 Miss. 299, 38 So. 285, 1905 Miss. LEXIS 21 (Miss. 1905).

Where the plaintiff's attorney caused the defendant's attorney to act upon the belief that a case would be continued at the next term of the justice's court, a judgment taken by plaintiff himself at said term in the absence of the defendant and his attorney is fraudulent and after the defendant without fault has lost the right to appeal it will be enjoined and a new trial granted in equity, although the plaintiff's attorney had no intent to deceive. Gulf & S. I. R. Co. v. Flowers, 85 Miss. 633, 38 So. 37, 1904 Miss. LEXIS 180 (Miss. 1904).

4. —Consent of parties.

Justices of the peace may, by consent of the parties, postpone the trial of a cause to a particular day between the regular terms and then try it and give judgment. Rice v. Locke, 59 Miss. 189, 1881 Miss. LEXIS 99 (Miss. 1881).

5. —Nonresident or transient persons.

When the plaintiff or defendant is a nonresident or transient person, upon affidavit that a delay in the trial until the regular term would be of material injury, the justice may have the parties summoned to appear at any reasonable time and what is a reasonable time is a question for him to decide. Goodbar v. Owen, 70 Miss. 840, 12 So. 556, 1893 Miss. LEXIS 6 (Miss. 1893).

6. Notice of trial; service of process.

Parties litigant are not charged with notice of time and place of holding courts of justice of peace. Swift & Co. v. Fox, 163 Miss. 783, 141 So. 277, 1932 Miss. LEXIS 86 (Miss. 1932); McCormick Motor Car Co. v. McDonald, 153 Miss. 409, 121 So. 121, 1929 Miss. LEXIS 40 (Miss. 1929).

Default judgment against garnishee, entered by justice of peace after service of garnishee summons, not specifying time and place for hearing, held void and ineffective. Swift & Co. v. Fox, 163 Miss. 783, 141 So. 277, 1932 Miss. LEXIS 86 (Miss. 1932).

Summons issued and returnable, not to regular term of justice court, but to special day, is not void, but merely irregular. McCormick Motor Car Co. v. McDonald, 153 Miss. 409, 121 So. 121, 1929 Miss. LEXIS 40 (Miss. 1929).

Where summons was returnable to a past day which was an impossible date, and the law did not fix the time or place of the next term, such matters being left to the discretion and convenience of the justice of the peace, the judgment rendered pursuant thereto was void. Howell v. Kersh, 152 Miss. 266, 119 So. 186, 1928 Miss. LEXIS 254 (Miss. 1928).

A judgment of a justice, unless against a non-resident or transient person as authorized by this section, upon less than five days' service of process, is void. Comenitz v. Bank of Commerce, 85 Miss. 662, 38 So. 35, 1904 Miss. LEXIS 178 (Miss. 1904), overruled, Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

A judgment of a justice in a civil case against two or more defendants is an entirety and being void as to one is void as to all. Comenitz v. Bank of Commerce, 85 Miss. 662, 38 So. 35, 1904 Miss. LEXIS 178 (Miss. 1904), overruled, Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

On appeal of a case involving a nonresident wherein the trial at a "reasonable time" is left to the decision of the justice, the circuit court cannot dismiss the case on the ground that reasonable notice was not given, but will try it anew on its merits. Goodbar v. Owen, 70 Miss. 840, 12 So. 556, 1893 Miss. LEXIS 6 (Miss. 1893).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 9-11-15 requires justice court judges to "hold regular terms of their courts, at such times as they may appoint, not exceeding two and not less than one (1) in every month"; this section also provides justice court is court of record "with all power incident to a court of record, including power to fine in amount of fine and length of imprisonment that is authorized for municipal court in Miss. Code Section 21-23-7(11) for contempt of court." Ferguson, June 9, 1993, A.G. Op. #93-0331.

Section 9-11-15 authorizes justice court judge to hold court on Saturdays if business of court requires and clerk or deputy clerk must be present if it is necessary to issue process from bench. Tucker, Feb. 2, 1994, A.G. Op. #93-0997.

RESEARCH REFERENCES

ALR.

Intoxication of witness or attorney as contempt of court. 46 A.L.R.4th 238.

Am. Jur.

17 Am. Jur. 2d, Contempt § 140, 141.

CJS.

17 C.J.S., Contempt §§ 69 et seq.

51 C.J.S., Justices of the Peace § 60.

§ 9-11-17. Repealed.

Repealed by Laws, 1991, ch. 325 § 1, eff from and after July 1, 1991.

§ 9-11-17. [Codes, Hutchinson's 1848, ch. 50, art. 11 (6); 1857, ch. 58, art. 12; 1871, § 1312; 1880, § 2195; 1892, § 2400; 1906, § 2729; Hemingway's 1917, § 2228; 1930, § 2077; 1942, § 1811; Laws, 1981, ch. 471, § 20; Laws, 1982, ch. 423, § 28]

Editor's Notes — Former § 9-11-17 permitted justice court judges to sit and act together or individually.

§ 9-11-18. Justice court clerk clearing account.

(1) There is hereby created in the county depository of each county a clearing account to be designated as the "Justice Court Clerk Clearing Account," in which shall be deposited (a) all such monies as the clerk of the justice court shall receive from any person complying with any writ of garnishment, attachment, execution or other like process authorized by law for the enforcement of a judgment; (b) all such monies as are received in criminal cases in the justice court pursuant to any order requiring payment as restitution to the victims of criminal offenses; (c) all cash bonds as shall be deposited with the court; (d) any portion of any fees required by law to be

collected in civil cases which are to pay for the service of process or writs in another county as provided by Section 9-11-20; and (e) any other money as shall be deposited with the court, except fees paid for the services of a constable, which by its nature is not at the time of its deposit public monies, but which is to be held by the court in a trust or custodial capacity in a case or proceeding before the court. The clerk of the justice court shall account for all monies deposited in and disbursed from such account and shall be authorized and empowered to draw and issue checks on such account at such times, in such amounts and to such persons as shall be proper and in accordance with law; provided, however, such monies as are forfeited in criminal cases shall be paid by the clerk of the justice court to the clerk of the board of supervisors for deposit in the general fund of the county in the same manner as provided in Section 9-11-19 for fees, costs, fines and penalties charged and collected in the justice court.

(2) Any monies deposited with the court in civil cases, which are fees paid for the services of a constable, shall be reported by the clerk of the court in the same manner as provided by Section 9-11-19 and shall be considered as being fees within the meaning of such section. It shall be the duty of the clerk of the board of supervisors to disburse such fees monthly, upon approval of the board of supervisors, to the constables entitled thereto.

(3) The justice court clearing account may bear interest and the clerk of the justice court shall account for all interest earned on such account and pay such interest to the clerk of the board of supervisors for deposit in the general fund of the county in the same manner as provided in Section 9-11-19 for fees, costs, fines and penalties charged and collected in the justice court.

HISTORY: Laws, 1984, ch. 502, § 1; Laws, 1991, ch. 414, § 1, eff from and after July 1, 1991.

Cross References — Appointment and duties of clerk of justice court, see §§ 9-11-27 and 9-11-29.

Exemption from report of and payment into county general fund of monies deposited in justice court clerk clearing account, see § 9-11-19.

Provision that requirement that sums paid to justice court clerk be deposited in general fund of county is inapplicable to monies required to be deposited in the justice court clerk clearing account, see § 25-3-36.

OPINIONS OF THE ATTORNEY GENERAL

Constable fees, except mileage fee and fail case allowance, are to be deposited in justice court clerk clearing account; justice court clerk is not required to deposit constable fees from clearing account to county general fund; board of supervisors is empowered to pay employer's contribution only as to $1,000ear fail case allowance. McGee, Feb. 1, 1990, A.G. Op. #90-0048.

A constable is not entitled to receive a fee for service of process unless that process is actually served; if the constable returns the process "unable to serve" or "not found," then he has not actually served the process and he is not entitled to a fee. Fortier, October 9, 1998, A.G. Op. #98-0599

A constable is responsible for requesting payment from the county for the services he provides. Hemphill, December 18, 1998, A.G. Op. #98-0746

§ 9-11-19. Collection and report of fines and penalties.

(1) It shall be the duty of every clerk of the justice court to receive and account for all fees, costs, fines and penalties charged and collected in the justice court, and, monthly to report in writing under oath, to the clerk of the board of supervisors who shall upon receipt submit such report to the board of supervisors of all such fees, costs, fines and penalties received, including cash bonds and other monies which have been forfeited in criminal cases and at least semiannually any delinquent fines and penalties, giving the date, amount, and names of persons from whom such monies were received, and to pay so much thereof as shall have been received to the clerk of the board of supervisors for deposit into the general fund of the county. Any clerk of the justice court who shall fail to make such report or to pay the money so received shall, in addition to any other fine or punishment provided by law for such conduct, not be entitled to compensation for the period of time during which such report or money is outstanding.

(2) The provisions of this section shall not, except as to cash bonds and other monies which have been forfeited in criminal cases, apply to monies required to be deposited in the justice court clerk clearing account as provided in Section 9-11-18, Mississippi Code of 1972.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 2 (27); 1857, ch. 58, art. 33; 1871, § 1342; 1880, § 2230; 1892, § 2430; 1906, § 2759; Hemingway's 1917, § 2258; 1930, § 2107; 1942, § 1841; Laws, 1932, ch. 195; Laws, 1981, ch. 471, § 21; Laws, 1982, ch. 423, § 14; Laws, 1984, ch. 502, § 3; Laws, 1993, ch. 406, § 1, eff from and after October 1, 1993.

Cross References — Money paid into the justice court clerk clearing account, see § 9-11-18.

Payment to clerk of board of supervisors of amounts forfeited in criminal cases, see § 9-11-18.

Deposits into county general fund of interest earned on justice court clerk clearing accounts, see § 9-11-18.

Payment to county chancery clerk of fees collected for serving process or writ issued in different county, see § 9-11-20.

Justice court fees, costs, fines and penalties after January 1, 1984 being paid to clerk for deposit into county general fund, see § 25-3-36.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Minimum fine which may be imposed, see § 99-33-3.

JUDICIAL DECISIONS

1. In general.

Justice court judge's receiving a criminal defendant's bond and loaning bond money to other defendants was willful, or at least negligent, misconduct which he knew or should have known was beyond legitimate exercise of his legal authority and constituted judicial misconduct, even though judge's handling of money was limited to a few occasions, and there was no evidence that he materially benefited from collection of fine money. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

It is improper for a justice court judge to handle money in lieu of court clerk handling money. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

A justice court judge should undertake the responsibility of personally receiving fine money only in isolated and clearly necessitous circumstances. If such an extreme occasions arises, the judge must give a written receipt, keep the money segregated and apart from his or her own, and at the very first opportunity deliver it to the justice court clerk with an explanation of why the judge received it personally. Mississippi Judicial Performance Com. v. Justice Court Judge, 580 So. 2d 1259, 1991 Miss. LEXIS 303 (Miss. 1991).

Recommendation of Commission on Judicial Performance, pursuant to Commission's rules, was accepted by the Supreme Court and removal ordered for a justice court judge who had knowingly accepted money from fine violations, falsely entered a judgment "dismissed" on court dockets and records, and retained fine money for his own use. In re Stewart, 490 So. 2d 882, 1986 Miss. LEXIS 2496 (Miss. 1986).

Justice court judge whose ignorance and incompetence results in skimming of traffic ticket funds or other funds is to be removed from office. In re Inquiry Concerning Garner, 466 So. 2d 884, 1985 Miss. LEXIS 1960 (Miss. 1985).

A particular statute, § 9-11-19, concerning the duties of a justice to account for fines and making its violation a misdemeanor, does not control the general statute, § 97-11-25, concerning unlawful conversion of public funds by a state officer and making its violation a felony, since there are substantive differences between the two, violation of the method of performing a duty on the one hand as opposed to unlawful conversion of public funds on the other. Hannah v. State, 336 So. 2d 1317, 1976 Miss. LEXIS 1565 (Miss. 1976), cert. denied, 429 U.S. 1101, 97 S. Ct. 1125, 51 L. Ed. 2d 551, 1977 U.S. LEXIS 765 (U.S. 1977).

A convict can properly turn his fine over to the justice before whom he was convicted. Odom v. State, 58 So. 145 (Miss. 1912).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 9-11-19 makes it duty of every clerk of justice court to receive and account for all fees, costs, fines and penalties that are charged and collected in justice court, and to report monthly to board of supervisors as to such accounts. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Justice court clerk is, under Miss. Code Section 9-11-19, required to keep records on delinquent fines. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Section 9-11-19 sets forth the duty of the justice court clerk to collect and account for all fees, costs, fines and penalties charged in justice court. The justice court clerk is to report such collections to the clerk of the board of supervisors monthly. There is no requirement that the justice court judge verify these collections. Spencer, August 2, 1996, A.G. Op. #96-0493.

Constable fees are considered a "claim" for purposes of payment from the claims docket. Farmer and Malone, Oct. 25, 2002, A.G. Op. #02-0612.

The chancery clerk is not authorized to pay constable fees from the certificate sent by the justice court clerk without the approval of the county board of supervisors. Farmer and Malone, Oct. 25, 2002, A.G. Op. #02-0612.

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Clerks of Court § 31.

CJS.

21 C.J.S., Courts §§ 327-351 et seq.

§ 9-11-20. Service of process or writ outside of issuing county; sharing fees.

In any civil case in the justice court in which any process or writ is to be served outside of the county where issued, the clerk of the justice court is hereby authorized and directed to forward, by United States mail, to the clerk of the justice court of the county where such writ or process is to be served, that portion of any fees required by law to be collected for the service of such process or writ along with the process or writ to be served. The clerk of the justice court of the county where the process or writ is to be served shall, upon receipt thereof, deliver such process or writ to a constable of the county for the service thereof and shall report and pay over such fees to the chancery clerk of the county at the time and in the manner provided in subsection (1) of Section 9-11-19 for the report and payment of fees, costs, fines and penalties charged and collected in the justice court.

HISTORY: Laws, 1984, ch. 502, § 2, eff from and after passage (approved May 15, 1984).

OPINIONS OF THE ATTORNEY GENERAL

A constable has no jurisdiction to serve process outside the county in which he was elected and therefore may not collect a fee for serving such process. Bean, Aug. 30, 2002, A.G. Op. #02-0505.

A constable may not serve a summons for a Justice Court in a county other than the one in which he was elected. Aldridge, Mar. 31, 2005, A.G. Op. 05-0046.

§ 9-11-21. Receipt itemizing costs, fees and other payments made to clerk of justice court.

The clerk of the justice court is required in all cases to give to any person paying him any fees, costs or other money a uniform receipt, the form of which is to be prepared by the attorney general. Such receipt shall contain the particulars of such fees, costs or other money, the amount of such fees, costs or other money and such other information as the attorney general shall deem necessary. The county shall have printed such receipts at county expense and distribute them to the clerk of the justice court of the county. Provided, however, that where the party filing the complaint is an entity of government, the clerk shall not be required to receive a prepayment of costs nor issue a receipt, but the clerk shall enter a notation on the docket wherein said complaint is recorded indicating that the party is exempt from payment of costs.

HISTORY: Codes, 1942, § 1841.5; Laws, 1964, ch. 334; Laws, 1984, ch. 502, § 4, eff from and after passage (approved May 15, 1984).

Cross References — Money paid into the justice court clerk clearing account, see § 9-11-18.

Making and filing of bill of costs, see § 11-53-65.

Fees of justice court, see § 25-7-25.

§ 9-11-23. Remedy for money collected.

When any clerk of the justice court shall have collected in his official capacity any money, fines or penalties, and shall fail to pay or account for the same to the person or official entitled to receive the same, he shall be liable to be proceeded against on his official bond in a summary way by motion in any court having jurisdiction of the amount collected and withheld, of which motion five (5) days' notice shall be served on the clerk of the justice court and the sureties on his bond, or such of them as may be found; and judgment for the amount illegally withheld by the clerk of the justice court and ten percent (10%) thereon, and all costs, shall be rendered against the clerk of the justice court and his sureties, or such of them as have been served with notice.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 2 (26); 1857, ch. 58, art. 32; 1871, § 1339; 1880, § 2229; 1892, § 2431; 1906, § 2760; Hemingway's 1917, § 2259; 1930, § 2108; 1942, § 1842; Laws, 1985, ch. 440, § 3, eff from and after passage (approved March 27, 1985).

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Money paid into the justice court clerk clearing account, see § 9-11-18.

JUDICIAL DECISIONS

1. In general.

Justice of the peace who received from garnishee amount of judgment against defendant and costs and paid it over to judgment creditor after defendant had filed his plea of having been adjudicated a bankrupt and notwithstanding money was exempt as wages held liable with his bondsmen to bankrupt as against contention that justice of the peace was not authorized to receive or disburse the money, and, therefore, could not be proceeded against upon his bond and be made to pay over the money again under statute. Korndorffer v. Fail, 179 Miss. 244, 174 So. 565, 1937 Miss. LEXIS 19 (Miss. 1937).

Demand need not necessarily be made upon the administratrix of a deceased justice of the peace before bringing action on his official bond. United States Fidelity & Guaranty Co. v. Adams County, 105 Miss. 675, 63 So. 192, 1913 Miss. LEXIS 247 (Miss. 1913).

§ 9-11-25. Delivery of books, records and papers of justice court judge leaving office or dying to justice court clerk.

Every justice court judge whose term of office expires, or who resigns, removes from the county, or otherwise goes out of office, and the legal representative and next of kin of every justice court judge who dies, shall, within ten (10) days thereafter, deliver his case record, with all process and papers and books of statutes relating to his office, to the clerk of the justice court of the county.

HISTORY: Codes, Hutchinson's 1848, ch. 50, art. 10 (3); 1857, ch. 58, art. 15; 1871, § 1341; 1880, §§ 2232-2236; 1892, § 2432; 1906, § 2761; Hemingway's 1917, § 2260; 1930, § 2109; 1942, § 1843; Laws, 1981, ch. 471, § 22; Laws, 1982, ch. 423,

§ 28; Laws, 1991, ch. 594, § 1, eff from and after passage (approved April 15, 1991).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Where the prosecuting witness in a robbery prosecution had denied that she had ever been convicted of any offenses other than driving without a driver's license and permitting gambling on premises occupied by her, the accused was entitled to show other convictions of the prosecuting witness by a deputy circuit clerk, whose office was a custodian of the docket of a man who was formerly a justice of the peace. Hardin v. State, 232 Miss. 470, 99 So. 2d 600, 1958 Miss. LEXIS 294 (Miss. 1958).

Where a justice of the peace died after an appeal had been taken from his judgment, but before the record had been sent to the circuit court, and his administrator had complied with Code 1892, § 2432, providing that on the death of a justice of the peace his representative shall deliver his docket and papers to the clerk of the circuit court, who shall deliver them to the successor in the office of the decedent, the appeal will not be dismissed although a term of court has intervened between the death of the justice and the return of the record to the circuit court. Brennan v. Straas, 85 Miss. 341, 37 So. 956, 1904 Miss. LEXIS 163 (Miss. 1904).

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d (Rev), Justices of the Peace § 6.

§ 9-11-27. Appointment of clerk; designation of powers; compliance with Section 9-1-46.

(1) The board of supervisors of each county shall, at its own expense, appoint one (1) person to serve as clerk of the justice court system of the county, and may appoint such other employees for the justice court of the county as it deems necessary, including a person or persons to serve as deputy clerk or deputy clerks. The board of supervisors of each county with two (2) judicial districts may, at its own expense, appoint two (2) persons to serve as clerks of the justice court system of the county, one (1) for each judicial district, and may appoint such other employees for the justice court system of the county as it deems necessary including persons to serve as deputy clerks. The clerk and deputy clerks shall be empowered to file and record actions and pleadings, to receive and receipt for monies, to acknowledge affidavits, to issue warrants in criminal cases upon direction by a justice court judge in the county, to approve the sufficiency of bonds in civil and criminal cases, to certify and issue copies of all records, documents and pleadings filed in the justice court and to issue all process necessary for the operation of the justice court. The clerk or deputy clerks may refuse to accept a personal check in payment of any fine or cost or to satisfy any other payment required to be made to the justice court. All orders from the justice court judge to the clerk of the justice court shall be written. All

cases, civil and criminal, shall be assigned by the clerk to the justice court judges of the county in the manner provided in Section 11-9-105 and Section 99-33-2. A deputy clerk who works in an office separate from the clerk and who is the head deputy clerk of the separate office may be designated to be trained as a clerk as provided in Section 9-11-29.

(2) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall report the names of all justice court clerks who have failed to comply with the reporting requirements of Section 9-1-46 to the boards of supervisors that selected them. Each clerk shall be given three (3) months from the date on which the board was given notice to come into compliance with the requirements of Section 9-1-46. The Administrative Office of Courts shall notify the board of supervisors of any justice court clerk who fails to come into compliance after the three-month notice required in this subsection. Any noncompliant clerks shall be terminated for failure to comply with Section 9-1-46 reporting requirement.

HISTORY: Laws, 1979, ch. 409; Laws, 1981, ch. 471, § 11; Laws, 1982, ch. 423, § 7; Laws, 1985, ch. 440, § 4; Laws, 1990, ch. 380, § 1; Laws, 1991, ch. 480, § 2; Laws, 1991, ch. 551, § 3; Laws, 1994, ch. 341, § 1; Laws, 2001, ch. 462, § 1; Laws, 2014, ch. 457, § 70, eff from and after July 1, 2014.

Cross References — Justice court docket, see § 9-11-11.

Money paid into the justice court clerk clearing account, see § 9-11-18.

Duty of justice court judge to collect and report fines and penalties, see § 9-11-19.

Continuing education and bond required of justice court clerk, see § 9-11-29.

Venue of civil actions upon appointment of clerk for justice court prior to January 1, 1984, see § 11-9-101.

Procedure for commencing civil suits in justice courts, see § 11-9-105.

Transfer of action to proper venue where court has subject matter jurisdiction but lacks venue jurisdiction, see § 11-11-17.

Costs and fees in justice courts, see § 25-7-25.

Venue of criminal actions upon appointment of clerk for justice court prior to January 1, 1984, see § 99-33-1.

Filing affidavit in criminal matters before judge or clerk of justice court from and after January 1, 1984, see § 99-33-2.

Rule governing clerk's duty to keep papers, see Uniform Rule of Procedure for Justice Court 1.06.

JUDICIAL DECISIONS

1. In general.

Officer was sworn in by a justice court judge to fulfill the duties of a justice court deputy clerk in June 2015, and he was acting as a de facto officer and possessed the requisite authority to administer the oath and swear to the charging affidavit; therefore, any defects that may have existed in the appointment of the officer did not negate that he was acting under the color of appointment at the time he issued defendant's affidavit. Oliver v. State, — So. 3d —, 2019 Miss. App. LEXIS 18 (Miss. Ct. App. Jan. 15, 2019).

Justice court judge did not interfere with rotation of cases so as to create forum shopping or violate judicial canons, where it was practice of judges to handle cases for each other when the other was unavailable and statutes did not prohibit judges from handling each other's cases when a judge is unavailable. Mississippi

Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

OPINIONS OF THE ATTORNEY GENERAL

The responsibility to oversee the everyday administrative duties of the justice court clerk lies with the board of supervisors and may not be delegated to the justice court judge; the justice court judge has the authority to oversee the duties of the justice court clerk and deputy clerks with respect to the conducting of trials and hearings, but such authority does not extend to the administrative level; the board of supervisors may seek advice from the justice court judge on matters concerning the operation of the justice court, but any policy making decisions with regards to the operation of the justice court clerk's office should be made by the board of supervisors. Trapp, Jr., Nov. 30, 2001, A.G. Op. #01-0708.

Miss. Code Section 9-11-27 specifically allows justice court clerk or deputy clerk to take guilty plea for traffic offenses. Vess, Jan. 20, 1993, A.G. Op. #92-0997.

Duties of justice court clerk are set forth at Miss. Code Section 9-11-27. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Miss. Code Section 9-11-27 gives justice court clerk power to acknowledge affidavits. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Justice court clerk has both power and duty to issue witness subpoenas in criminal and civil cases pursuant to Miss. Code Section 9-11-27. Ferguson, June 9, 1993, A.G. Op. #93-0331.

There is nothing in statutes specifically requiring justice court clerk to attend court and to record all proceedings; however, it is duty of justice court clerk under Miss. Code Section 9-11-27 to do all acts necessary for operation of justice court. Ferguson, June 9, 1993, A.G. Op. #93-0331.

In justice court, after felony case has been bound over by the judge, it is duty of justice court clerk under Miss. Code Section 9-11-27 to certify case over to Grand Jury and make all copies of file and send that to Circuit Court. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Under Miss. Code Section 9-11-27, justice court clerk has duty to "issue all process necessary for the operation of the justice court."; this includes subpoenas, garnishments, and writs of replevin. Ferguson, June 9, 1993, A.G. Op. #93-0331.

Clerk and deputy clerk are duty-bound to record all actions but it is ultimate responsibility of justice court judge to ensure correctness of disposition before signing off on it. Tucker, Feb. 2, 1994, A.G. Op. #93-0997.

Legislative intent of Section 9-11-27 is to allow Justice Court Clerk to operate independently or without judicial direction as to execution of her specific statutory duties; thus, while board of supervisors has administrative supervision over Justice Court Clerk, Justice Court Judge may direct clerk in carrying out of such duties and tasks as are necessary to actual conduct of trials. Tucker, Feb. 2, 1994, A.G. Op. #93-0997.

Only board of supervisors can pass on claim of vendor and order it paid; if claim is denied and later determined to have been properly allowable by court of competent jurisdiction, then any interest determined to be owing should be paid by board of supervisors. Compton, March 23, 1994, A.G. Op. #94-0135.

A deputy court clerk has the authority to acknowledge affidavits anywhere in the county at any time, to include after 5:00 p.m. and on weekends. Shirley, Nov. 7, 2003, A.G. Op. 03-0582.

Any county law enforcement officials may serve as deputy clerks as long as they have been officially appointed by the board of supervisors. Aldridge, Apr. 1, 2005, A.G. Op. 05-0111.

An entity of government is not required to prepay court costs prior to commencing a civil action. Erby, Apr. 29, 2005, A.G. Op. 05-0118.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of court §§ 2 et seq.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-11-29. Clerk's certificate of completion of Justice Court Clerks Training Course; bond entered by clerk.

(1) Within ninety (90) days after appointment, every person appointed as clerk of the justice court under the provisions of Section 9-11-27, or a deputy clerk designated to receive training under Section 9-11-27, shall file annually in the office of the circuit clerk a certificate of completion of a course of training and education conducted by the Mississippi Judicial College of the University of Mississippi Law Center. The training course shall be known as the "Justice Court Clerks Training Course" and shall consist of at least twelve (12) hours of instruction. The contents of the courses and when and where the courses are to be conducted shall be determined by the judicial college. The judicial college shall issue a certificate of completion to the clerks and deputy clerks who complete a course.

(2) Every person appointed as clerk and deputy clerk of the justice court shall, before entering into the duties of the position, give bond, with sufficient surety, to be payable, conditioned and approved as provided by law and in the same manner as other county officers, in a penalty equal to Fifty Thousand Dollars ($50,000.00); and any party interested may proceed on such bond in a summary way, by motion in any court having jurisdiction of the same, against the principal and sureties, upon giving five (5) days' previous notice. The cost of the bond shall be paid by the county.

(3) Upon the failure of any person appointed as clerk of the justice court to file the certificates of completion as provided in subsection (1) of this section, that person shall not be allowed to carry out any of the duties of the office of clerk of the justice court, and shall not be entitled to compensation for the period of time during which the required certificates remain unfiled.

HISTORY: Laws, 1981, ch. 471, § 12; Laws, 1982, ch. 423, § 8; Laws, 1986, ch. 352; Laws, 1986, ch. 458, § 13; reenacted, Laws, 1989, ch. 341, § 1; Laws, 2001, ch. 462, § 2; Laws, 2013, ch. 550, § 1, eff from and after July 1, 2013.

Editor's Notes — Section 48, Chapter 458, Laws, 1986, provided that § 9-11-29 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws, 1986, by deleting the date for repeal.

Cross References — For similar requirements of continuing education courses by justice court judges, see § 9-11-3.

Money paid into the justice court clerk clearing account, see § 9-11-18.

Bonding of public officers, see § 25-1-13 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Section 9-1-29 does not apply to justice courts because Mississippi Rules of Civil Procedure are not applicable to justice courts. Tucker, Feb. 2, 1994, A.G. Op. #93-0997.

The justice court clerk and all justice court deputy clerks must give bond prior to assuming the duties of the clerk, and there is no distinction between deputy clerks that handle money and those that do not handle money. Goodman, Oct. 19, 2001, A.G. Op. #01-0654.

Each justice court deputy clerk must comply with the bond requirements of subsection (2). Goodman, Oct. 19, 2001, A.G. Op. #01-0654.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Clerks of court § 3.

CJS.
21 C.J.S., Courts §§ 327-351.

§ 9-11-31. Board of supervisors to appoint justice court or municipal court judge to serve for justice court judge who is unable to serve for thirty consecutive days.

(1) When any justice court judge is unable, by reason of being under any suspension by the Commission on Judicial Performance or the Mississippi Supreme Court, or by reason of sickness or other disability, to attend and hold court at the time and place required by law to do so for a period of time in excess of thirty (30) consecutive days, and due to such inability to attend and hold court there is no judge to hold court in such county, the board of supervisors of the county in which such judge serves shall appoint another justice court judge of the county or an adjoining county or a municipal court judge to attend and hold said court and perform all the duties of such judge during such suspension or disability.

(2) Any presently sitting justice court judge appointed pursuant to subsection (1) of this section shall receive no additional compensation for his or her service. Any other person so appointed shall, for the period of his service, receive compensation from the county for each day's service a sum equal to $\frac{1}{260}$ths of the current salary in effect for justice court judges.

HISTORY: Laws, 1990, ch. 426, § 1, eff from and after July 1, 1990.

Cross References — Justice court judge who is unable to serve by reason of being under suspension not to receive salary, see § 25-3-36.

OPINIONS OF THE ATTORNEY GENERAL

When justice is unable to attend and hold court, Miss. Code Section 9-11-31 provides that board of supervisors may appoint qualified person "to attend and hold said court and perform all the duties of such judge during such suspension or disability." Ferguson, June 9, 1993, A.G. Op. #93-0331.

When a justice court judge resigns, the vacancy should be filled in accordance with § 23-15-839; § 9-11-31 is to be used only when the justice court judge's office is temporarily vacant due to suspension or disability. Sherard, July 22, 1999, A.G. Op. #99-0128.

§ 9-11-33. Correction of errors or mistakes in proceedings or records; setting aside proceedings or judgments for good cause.

A justice court judge may correct any errors or mistakes in any proceedings that are conducted before such judge or in the records of proceedings conducted before such judge. A justice court judge may set aside any proceeding or judgment in a case conducted before such judge upon a written order as may be just and proper after a proceeding in which the judge determines that good cause has been shown to support such order.

HISTORY: Laws, 1990, ch. 437, § 1, eff from and after July 1, 1990.

JUDICIAL DECISIONS

1. Judicial Misconduct.

Recommendation for a public reprimand was not adopted since it was too lenient for a judge who committed willful misconduct under Miss. Const. Art. 6, § 177A by violating Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(7), 3B(8), and 3C(1) when he engaged in improper ex parte communications; moreover, he ignored Miss. Code Ann. § 9-11-33 and Miss. Unif. R. P. J. Ct. 2.06 when he set aside a final judgment and interfered with orders handed down by another judge. Miss. Comm'n on Judicial Performance v. Britton, 936 So. 2d 898, 2006 Miss. LEXIS 463 (Miss. 2006).

While acting in an official capacity, judge violated Miss. Const. art. VI, § 177A, Miss. Code Ann. § 9-11-33, and Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(A), 3(B)(2), 3(B)(7), 3(B)(8), 3(C)(1), 3(C)(2), 4(A), and 4(D)(1), by conducting ex parte communications with parties, by habitually taking civil cases under advisement and failing to render timely decisions or correct orders when necessary; a public reprimand, suspension for 30 days without pay, and payment of the costs of the proceeding was held to be appropriate discipline. Miss. Comm'n on Judicial Performance v. McPhail, 874 So. 2d 441, 2004 Miss. LEXIS 593 (Miss. 2004).

OPINIONS OF THE ATTORNEY GENERAL

Section 9-11-33 does not give a justice court judge the authority to set aside a not guilty verdict from a criminal charge. Furthermore, any attempt to retry a defendant for a crime in which he has already been found not guilty would constitute double jeopardy. Nash, April 26, 1996, A.G. Op. # 96-0278.

A justice court judge may correct errors or set aside judgments in cases conducted before such judge but does not have authority to set aside or modify a judgment in a case heard before another judge. Cooper, July 3, 1997, A.G. Op. #97-0378.

RESEARCH REFERENCES

Am. Jur.

28 Am. Jur. Proof of Facts 3d 439, Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property.

§ 9-11-35. Justice Court Collections Payment Program; purpose; funding of program.

(1) The Department of Revenue shall administer the Justice Court

Collections Payment Program. The purpose of the program shall be to provide support for salaries of justice court personnel, for the purchase, operation and maintenance of software and equipment, for facility planning and improvement, and for other expenses incurred for the purpose of collecting fines and assessments within the justice court system. Monies appropriated by the Legislature to the Department of Revenue for the purposes of funding the Justice Court Collections Payment Program shall be expended by the department to each participating county based upon that county's deposits in the Treasury of the monies received under the provisions of Section 99-19-73.

(2) The Department of Revenue shall promulgate rules and procedures relating to the disbursement of monies to participating counties. The department shall promulgate rules and procedures to ensure that the justice court system of a participating county practices proper and effective collection procedures for the collection of fines and other assessments. The county may use monies received from the program to defray the costs associated with collection actions under Section 19-3-41(4) for collection of delinquent fines and other assessments. The county shall participate in collection actions under Section 19-3-41(2) for collection of delinquent fines and other assessments in order to qualify.

HISTORY: Laws, 2014, ch. 512, § 1; Laws, 2017, 1st Ex Sess, ch. 7, § 8, eff from and after passage (approved June 23, 2017).

CHAPTER 13.

COURT REPORTERS AND COURT REPORTING

In General. 9-13-1
Board of Certified Court Reporters. 9-13-101

IN GENERAL

Sec.
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9-13-33 through 9-13-41. Repealed.
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9-13-61. Official county and family court reporter.
9-13-62. Repealed.
9-13-63. County court reporter fees as items of costs.

§ 9-13-1. Appointment of court reporter in circuit and chancery courts.

Each circuit judge and chancellor shall appoint a competent person as shorthand reporter in his district by an entry upon the minutes of the court of an order to that effect, dated and signed by him. The said shorthand reporter shall be known as the official court reporter of said district.

HISTORY: Codes, 1892, § 4235; 1906, § 4785; Hemingway's 1917, § 3138; 1930, § 709; 1942, § 1624.

Cross References — Taking of oaths before court reporter, see § 11-1-1.

Fee for transcript of testimony and exhibits to testimony, or copy of such transcript and exhibits, see § 25-7-89.

Costs for recording hearings before employee appeals board and contracting with court reporters, see § 25-9-132.

Stenographic transcription of involuntary commitment hearing, see § 41-21-73.

Rules governing court reporters, see Rules and Regulations Governing Certified Court Reporters.

JUDICIAL DECISIONS

1. In general.

It is common knowledge that most court reporters use tape recorders as they are taking the testimony, and if, on account of disability or other cause, the reporter is unable to do the transcriptions, others may run the recorders, and, in most cases, complete the transcriptions. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

Each judge of the district is under a duty to have available a person who is ready, willing and able to perform the duties of court reporter. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d (Rev), Courts §§ 1- 7.

CJS.

21 C.J.S., Courts §§ 136 et seq.

§ 9-13-3. Oath.

Before entering into his office, the court reporter shall take, in open court, an oath that he will faithfully discharge the duties thereof; and the oath so taken shall be entered in the minutes of the court.

HISTORY: Codes, 1892, § 4236; 1906, § 4786; Hemingway's 1917, § 3139; 1930, § 710; 1942, § 1625.

JUDICIAL DECISIONS

1. In general.

By virtue of this section the appointee must take an oath to faithfully discharge the duties of the office of court reporter. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

§ 9-13-5. Nature and term of office.

The court reporter when appointed and qualified by taking the oath required, and by filing the bond hereinafter mentioned, thereby becomes an officer of the court, and shall hold his office as court reporter for the term of four years from the date of his appointment unless sooner removed.

HISTORY: Codes, 1892, § 4237; 1906, § 4787; Hemingway's 1917, § 3140; 1930, § 711; 1942, § 1626.

JUDICIAL DECISIONS

1. In general.

On compliance with the provisions of the appropriate sections, the person appointed as court reporter becomes an officer of the court. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

OPINIONS OF THE ATTORNEY GENERAL

Intent of statute, providing that term of office for court reporter is four years, is that court reporter's term is concurrent with term of office of judge. Nichols, April 16, 1991, A.G. Op. #91-0182.

§ 9-13-7. Appointment and qualifications certified to other counties.

Copy of the writing by which the court reporter was appointed, and of the minutes relative to court reporter's oath shall, at the cost of the court reporter, be certified by the clerk of the court in which the entries thereof are made, to the clerk of the court in each of the several counties of the district for which the court reporter was appointed, to be entered on the minutes of the court in each county.

HISTORY: Codes, 1892, § 4238; 1906, § 4788; Hemingway's 1917, § 3141; 1930, § 712; 1942, § 1627.

§ 9-13-9. Bond.

The judge or chancellor shall require the court reporter to give bond in a penalty of not less than two thousand dollars to be approved by the court, conditioned for the faithful discharge of his duties, and such bond shall be filed in the office of the clerk of the court of any county in the district, who shall, at the cost of the court reporter, certify a copy thereof to the clerk of said court in each of the other counties of the district, to be filed and preserved in his office, and said copies shall be competent evidence in any proceedings. And such bond shall be recorded at length in the bond record book of the county where the original is filed.

HISTORY: Codes, 1892, § 4239; 1906, § 4789; Hemingway's 1917, § 3142; 1930, § 713; 1942, § 1628.

JUDICIAL DECISIONS

1. In general.

A court reporter who has not complied with § 9-13-9 should not be allowed to continue serving as a court reporter until the bond requirement has been fulfilled. In re Southwest Mississippi Regional Medical Center, 593 So. 2d 44, 1992 Miss. LEXIS 51 (Miss. 1992).

Under this section, the court reporter must give a bond in the sum of not less than $2,000, conditioned for the faithful discharge of duties. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

RESEARCH REFERENCES

Am. Jur.
63C Am. Jur. 2d, Public Officers and Employees §§ 127, 128 et seq.
3B Am. Jur. Legal Forms 2d, Bonds § 43:18.

CJS.
21 C.J.S., Courts § 136.

§ 9-13-11. Removal from office.

The judge or chancellor may in his discretion at any time remove the court reporter from office for incompetency or neglect of duty, and may appoint a court reporter to fill the vacancy as often as such removals occur. The appointment of a successor to the court reporter shall be made, and he shall qualify in the same manner, and he shall comply with all the other requirements, as is provided in the foregoing sections of this chapter.

HISTORY: Codes, 1892, § 4246; 1906, § 4796; Hemingway's 1917, § 3149; 1930, § 714; 1942, § 1629.

JUDICIAL DECISIONS

1. In general.
By virtue of this section the judge, in his discretion, may remove a court reporter for neglect of duty. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

§ 9-13-13. Resignation or vacation of office.

It shall not be lawful for the court reporter to resign or vacate his office so long as any business connected therewith, upon the discharge of which he has entered, is unfinished; but after such business has been completed as required by law, he may at any time resign or vacate his office; and his resignation shall take effect from the time he notifies the judge or chancellor of the same.

HISTORY: Codes, 1892, § 4245; 1906, § 4795; Hemingway's 1917, § 3148; 1930, § 715; 1942, § 1630.

JUDICIAL DECISIONS

1. In general.
Court stenographer did not relieve himself of duty of filing transcript of evidence by resignation. Robertson v. Southern Bitulithic Co., 129 Miss. 453, 92 So. 580, 1922 Miss. LEXIS 61 (Miss. 1922), overruled, Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

Stenographer's transcript not stricken from the record on ground he resigned office before filing thereof and his certificate was not official. Ward v. Ward, 123 Miss. 217, 85 So. 181, 1920 Miss. LEXIS 20 (Miss. 1920).

§ 9-13-15. Court reporter pro tempore; effect of appointment upon compensation of regular reporter.

If the court reporter is absent during the session of the court, the judge or chancellor may, by an order entered upon the minutes of the court, appoint a court reporter pro tempore, who shall be sworn to faithfully discharge his duties as such, and who shall perform all the duties and be liable to all the penalties and punishments described for or incident to the office of court reporter. The court reporter pro tempore shall be paid for his services by the Administrative Office of Courts, out of the salary of the regular court reporter and at the same rate as the regular court reporter for the time that the court reporter pro tempore shall act. The court which is being served by the court reporter pro tempore shall authorize his compensation by auditing and reporting the time served by the court reporter pro tempore to the Administrative Office of Courts. However, if the appointment of a court reporter pro tempore is made because of illness of the regular court reporter, the court may authorize compensation of said court reporter pro tempore from the Administrative Office of Courts without diminution of the salary of the regular court reporter, for a period not to exceed forty-five (45) days in any one (1) calendar year. The salary of the court reporter pro tempore shall be paid as provided in Section 9-13-19.

All acts of the court reporter pro tempore shall be as valid and effectual as if done by the regular court reporter; and such acts as are required to be certified and signed by the court reporter shall be certified and signed by him as court reporter pro tempore.

HISTORY: Codes, 1892, § 4244; 1906, § 4794; Hemingway's 1917, § 3147; 1930, § 716; 1942, § 1631; Laws, 1966, ch. 349, § 1; Laws, 1993, ch. 518, § 38, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

OPINIONS OF THE ATTORNEY GENERAL

Neither court reporters for the chancery, circuit, or county courts accrue leave, whether personal or sick, which may be used as creditable service for the purpose of calculating retirement benefits. Ready, May 26, 1998, A.G. Op. #98-0154

RESEARCH REFERENCES

Am. Jur.
20 Am. Jur. 2d (Rev), Courts §§ 1- 7.

CJS.
21 C.J.S., Courts §§ 136 et seq.

§ 9-13-17. Additional court reporters; compensation of regular reporter when assistant reporter alone is serving [Repealed effective January 1, 2020].

The circuit judge, chancellor, family court judge or county judge may, by an order spread upon the minutes and made a part of the records of the court, appoint an additional court reporter for a term or part of a term whose duties, qualifications and compensation shall be the same as is now provided by law for official court reporters. The additional court reporter shall be subject to the control of the judge or chancellor, as is now provided by law for official court reporters, and the judge or chancellor shall have the additional power to terminate the appointment of such additional court reporter, whenever in his opinion the necessity for such an additional court reporter ceases to exist, by placing upon the minutes of the court an order to that effect. The regular court reporter shall not draw any compensation while the assistant court reporter alone is serving; however, in the event the assistant court reporter is serving because of the illness of the regular court reporter, the court may authorize payment of said assistant court reporter from the Administrative Office of Courts without diminution of the salary of the regular court reporter, for a period not to exceed forty-five (45) days in any one (1) calendar year. However, in any circuit, chancery, county or family court district within the State of Mississippi, if the judge or chancellor shall determine that in order to relieve the continuously crowded docket in such district, or for other good cause shown, the appointment of an additional court reporter is necessary for the proper administration of justice, he may, with the advice and consent of the board of supervisors if the court district is composed of a single county and with the advice and consent of at least one-half (½) of the boards of supervisors if the court district is composed of more than one (1) county, by an order spread upon the minutes and made a part of the records of the court, appoint an additional court reporter. The additional court reporter shall serve at the will and pleasure of the judge or chancellor, may be a resident of any county of the state, and shall be paid a salary designated by the judge or chancellor not to exceed the salary authorized by Section 9-13-19. The salary of the additional court reporter shall be paid by the Administrative Office of Courts, as provided in Section 9-13-19; and mileage shall be paid to the additional court reporter by the county as provided in the same section. The office of such additional court reporter appointed under this section shall not be abolished or compensation reduced during the term of office of the appointing judge or chancellor without the consent and approval of the appointing judge or chancellor.

HISTORY: Codes, Hemingway's 1917, § 3154; 1930, § 717; 1942, § 1632; Laws, 1916, ch. 236; Laws, 1955 Ex. ch. 36; Laws, 1966, ch. 350, § 1; Laws, 1969 Ex Sess,

ch. 22, § 1; Laws, 1972, ch. 498, § 1; Laws, 1976, ch. 315; Laws, 1993, ch. 518, § 39, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Laws, 1999, ch. 432, § 1, provides:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

JUDICIAL DECISIONS

1. In general.

Evidently for the purpose of preventing delay, this section authorizes a judge to appoint an additional court reporter and to terminate the appointment when the necessity ceases to exist. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

OPINIONS OF THE ATTORNEY GENERAL

Neither court reporters for the chancery, circuit, or county courts accrue leave, whether personal or sick, which may be used as creditable service for the purpose of calculating retirement benefits. Ready, May 26, 1998, A.G. Op. #98-0154

County approval is required before a position such as an additional court reporter is submitted to the Administrative Office of Courts at a salary which would exceed the county's allocation of state funds and increase the county's supplemental payment obligation. Hilburn, Aug. 20, 2004, A.G. Op. 04-0394.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. Legal Forms 2d, Clerks of Court §§ 58:13 et seq.

§ 9-13-19. Salary; annual report.

(1) Court reporters for circuit and chancery courts may be paid an annual salary payable by the Administrative Office of Courts not to exceed Forty-nine Thousand Five Hundred Dollars ($49,500.00) for court reporters with five (5) years' experience or less; not to exceed Fifty-eight Thousand Five Hundred Dollars ($58,500.00) for court reporters who have more than five (5) years' experience but less than ten (10) years; and not to exceed Sixty-four Thousand Dollars ($64,000,00) for court reporters who have ten (10) years or more

experience. No amount of the increase in the maximum salary authorized by this section shall be paid from the State General Fund. The board of supervisors of any county is authorized to pay its court reporters the applicable amount of the maximum salary authorized by this section. In addition, any court reporter performing the duties of a court administrator in the same judicial district in which the person is employed as a court reporter may be paid additional compensation for performing the court administrator duties. The annual amount of the additional compensation shall be set by vote of the judges and chancellors for whom the court administrator duties are performed, with consideration given to the number of hours per month devoted by the court reporter to performing the duties of a court administrator. The additional compensation shall be submitted to the Administrative Office of Courts for approval.

(2) The several counties in each respective court district shall transfer from the general funds of those county treasuries to the Administrative Office of Courts a proportionate amount to be paid toward the annual compensation of the court reporter, including any additional compensation paid for the performance of court administrator duties. The amount to be paid by each county shall be determined by the number of weeks in which court is held in each county in proportion to the total number of weeks court is held in the district. For purposes of this section, the term "compensation" means the gross salary plus all amounts paid for benefits, or otherwise, as a result of employment or as required by employment, but does not include transcript fees otherwise authorized to be paid by or through the counties. However, only salary earned for services rendered shall be reported and credited for retirement purposes. Amounts paid for transcript fees, benefits or otherwise, including reimbursement for travel expenses, shall not be reported or credited for retirement purposes.

For example, if there are thirty-eight (38) scheduled court weeks in a particular district, a county in which court is scheduled five (5) weeks out of the year would have to pay five-thirty-eighths (5/38) of the total annual compensation.

(3) The salary and any additional compensation for the performance of court administrator duties shall be paid in twelve (12) installments on the last working day of each month after it has been duly authorized by the appointing judge or chancellor and an order duly placed on the minutes of the court. Each county shall transfer to the Administrative Office of Courts one-twelfth (1/12) of the amount required to be paid pursuant to subsection (2) of this section by the twentieth day of each month for the salary that is to be paid on the last working day of the month. The Administrative Office of Courts shall pay to the court reporter the total amount of salary due for that month. Any county may pay, in the discretion of the board of supervisors, by the twentieth day of January of any year, the amount due for a full twelve (12) months.

(4) From and after October 1, 1996, all circuit and chancery court reporters will be employees of the Administrative Office of Courts.

(5) No circuit or chancery court reporter shall be entitled to any compensation for any special or extended term of court after passage of this section.

(6) No chancery or circuit court reporter shall practice law in the court within which he or she is the court reporter.

(7) For all travel required in the performance of official duties, the circuit or chancery court reporter shall be paid mileage by the county in which the duties were performed at the same rate as provided for state employees in Section 25-3-41. The court reporter shall file in the office of the clerk of the court which he serves a certificate of mileage expense incurred during that term and payment of such expense to the court reporter shall be paid on allowance by the judge of such court.

HISTORY: Codes 1892, § 4242; 1906, § 4792; Hemingway's 1917, § 3145; 1930, § 718; 1942, § 1633; Laws, 1916, ch. 232; Laws, 1928, ch. 228; Laws, 1942, ch. 303; Laws, 1944, ch. 187; Laws, 1946, ch. 348, §§ 1, 2; Laws, 1948, ch. 265, §§ 1, 2; Laws, 1950, ch. 327, §§ 1-3; Laws, 1952, ch. 237; Laws, 1958, ch. 339; Laws, 1960, ch. 325; Laws, 1966, ch. 351, § 1; Laws, 1966, ch. 435, § 1; Laws, 1970, ch. 395, § 1; Laws, 1973, ch. 484, § 1; Laws, 1977, ch. 449; Laws, 1980, ch. 478; Laws, 1985, ch. 510, § 1; Laws, 1988, ch. 538; Laws, 1989, ch. 350, § 1; Laws, 1990, ch. 433, § 1; Laws, 1993, ch. 550, § 2; Laws, 1993, ch. 518, § 37; Laws, 1996, ch. 414, § 2; Laws, 1997, ch. 570, § 8; Laws, 2004, ch. 505, § 6; Laws, 2015, ch. 451, § 1, eff from and after July 1, 2015.

Editor's Notes — The United States Attorney General, by letter dated July 13, 1993, interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1993, ch. 518, § 37.

Laws, 1997, ch. 570, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 1997, whichever occurs later."

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1997, ch. 570, § 8.

By letter dated August 19, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2004, ch. 505, § 6.

JUDICIAL DECISIONS

1. In general.

Under this section stenographer is to receive $65 for each week of court scheduled to be held in his district and he cannot recover an additional amount for services during a special term. Robinson v. Madison County, 120 Miss. 406, 82 So. 307, 1919 Miss. LEXIS 100 (Miss. 1919).

OPINIONS OF THE ATTORNEY GENERAL

Neither court reporters for the chancery, circuit, or county courts accrue leave, whether personal or sick, which may be used as creditable service for the purpose of calculating retirement benefits. Ready, May 26, 1998, A.G. Op. #98-0154

A court reporter is required, unless waived, for child support cases filed by the Department of Human Services, and such court reporters are to paid an annual salary provided by the several counties of each respective court district. Dennis, January 29, 1999, A.G. Op. #98-0799.

Association dues could be included in the definition of "compensation" as "amounts paid for benefits, or otherwise, as a result of employment or as required by employment," and therefore, the board of supervisors may not pay amounts for dues over and above its proportionate share that is paid to the Administrative Office of Courts. Ross, February 26, 1999, A.G. Op. #99-0053.

§ 9-13-21. Court reporter's tax fee.

In each suit, cause or matter where (1) a plea or answer is filed, and (2) in probate or any other cause or matter wherein the court reporter actually serves, a court reporter's tax fee of ten dollars ($10.00) shall be collected as costs, and paid into the treasury of the county in which the case is tried, as the jury tax is collected by law and paid in the circuit court.

HISTORY: Codes, 1930, § 719; 1942, § 1634; Laws, 1926, ch. 144; Laws, 1978, ch. 427, § 1, eff from and after passage (approved March 23, 1978).

RESEARCH REFERENCES

ALR.

Attorney's personal liability for expenses incurred in relation to services for client. 66 A.L.R.4th 256.

§ 9-13-23. Stationery furnished.

The board of supervisors of each county shall provide the court reporter with all necessary stationery used by him in the performance of his official duties in the county.

HISTORY: Codes, 1892, § 736; 1906, § 797; Hemingway's 1917, § 582; 1930, § 720; 1942, § 1635; Laws, 1896, ch. 83; Laws, 1910, ch. 111; Laws, 1926, ch. 156.

§ 9-13-25. Duties.

The court reporter shall attend each session of the court of the district for which he was appointed, from day to day, and unless the same be waived, shall take, under the control of the judge or chancellor full and complete notes, stenographically (and may use recording machines in aid thereof) of all the oral evidence and other oral proceedings, except arguments of counsel, in each case, civil and criminal, tried therein upon an issue of facts and, in any other matter or in any other case that the judge or chancellor may especially direct. He shall carefully note the order in which the evidence, both oral and written, is introduced, and by whom it is introduced, giving the name of each witness, and identifying each deposition, exhibit made, or other item of evidence or matter of proceedings by words or figures of description, and he shall carefully note oral motions and all objections of counsel and rulings of the court made during the trial, in the order in which the same shall occur. And, upon request of any party, he shall, within the time required by the Mississippi Supreme Court Rules, or from the time of the demand, if made after the trial, neatly write out in typewriting a complete copy of his stenographic notes as taken therein or he shall neatly write out in typewriting a complete copy of all matters recorded on the recording machine with a caption showing the style of the case, its number, the court in which it was tried, and when tried, and shall affix thereto a suitable index, and shall certify, sign, and file the same in the office of the clerk of the court in which the case was tried; and he shall preserve his stenographic notes or his tape or record made by said recording machine in each case in which an appeal is taken, as a record of his office. If a party demand the writing out of the court reporter's notes for any other than the bona fide purpose of perfecting an appeal, he shall pay the court reporter in advance Twenty-five Cents (25¢) per hundred words for the same, but such work shall not delay the preparation of records for appeals. The court reporter shall serve in all habeas corpus and other matters which are heard in vacation, by agreement or otherwise, in the county of residence of the judge or chancellor. The court is authorized to purchase recording machines for the use of the court reporter, the cost of which shall be allocated to each county in the district according to the weeks of court held in each county. Any recording machine purchased for this purpose shall be of such quality as to accurately take and preserve all notes and records herein required to be made and preserved.

HISTORY: Codes, 1892, § 4240; 1906, § 4790; Hemingway's 1917, § 3143; 1930, § 721; 1942, § 1636; Laws, 1926, ch. 144; Laws, 1958, ch. 280, § 1; Laws, 1971, ch. 423, § 1; Laws, 1991, ch, 573, § 11, eff from and after July 1, 1991.

Cross References — Destruction of court reporter's shorthand notes, see § 9-5-171.

Extension of time for court reporters to prepare and file transcript. Miss. Sup. Ct., Rule 11.

Court reporter obtaining an extension of time to transcribe notes, see Miss. Sup. Ct., Rule 44.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Striking of transcript from record.
3. Filing of transcript.
4. Exhibits.

1. In general.

In a case alleging exposure to mold and other substances, an issue relating to the failure to have a court reporter present at a hearing for summary judgment was not preserved for review since no objection was made; even if the error had been preserved, such presence was not required under Miss. R. Civ. P. 78 and Miss. Code Ann. § 9-13-25, and the appellate court had no authority to promulgate such a rule. Hosey v. Mediamolle, 963 So. 2d 1267, 2007 Miss. App. LEXIS 585 (Miss. Ct. App. 2007).

Where defendant's counsel in argument referred to insurance, it was not error to refuse the request of plaintiff that court reporter take down the argument of defendant's counsel inasmuch as the reporter is not required to take stenographic notes of the arguments of counsel. Ward v. Mitchell, 216 Miss. 379, 62 So. 2d 388, 1953 Miss. LEXIS 648 (Miss. 1953).

A court reporter is not required to take stenographic notes of the arguments of counsel. Ward v. Mitchell, 216 Miss. 379, 62 So. 2d 388, 1953 Miss. LEXIS 648 (Miss. 1953).

Official report of the testimony delivered at a former trial is sufficiently authenticated by a stenographer's certificate that it is a true transcript of such testimony. McMasters v. State, 83 Miss. 1, 35 So. 302, 1903 Miss. LEXIS 3 (Miss. 1903).

2. Striking of transcript from record.

Official stenographer's notes will be stricken on motion, where evidence but partially reported and omission not supplied. Benjamin v. Virginia-Carolina Chemical Co., 126 Miss. 57, 87 So. 895, 1921 Miss. LEXIS 2 (Miss. 1921).

Where two stenographers acted at different times during the trial either was the official stenographer, and the transcript furnished will not be stricken unless shown to be incorrect in some material particular. Lumber Mineral Co. v. King, 96 Miss. 344, 54 So. 250, 1909 Miss. LEXIS 69 (Miss. 1909), superseded, 98 Miss. 733, 54 So. 250, 1910 Miss. LEXIS 118 (Miss. 1910).

3. Filing of transcript.

To exercise its appellate jurisdiction effectively, the Supreme Court must have before it all records necessary for the proper consideration of cases on appeal, and the court can hear and determine all motions and issues necessary for the exercise of its appeal powers and for the enforcement of its orders; since a proper decision of most cases on appeal requires a detailed consideration of the testimony in the trial court, it is futile to require a clerk to file a record that does not include a transcript of the testimony; although Mississippi Code Annotated section 9-13-41 [Repealed] permits a bill of exceptions in the absence of a transcript of the testimony, where the court reporter's notes are available, a transcription of such notes is preferable and a bill of exceptions is a poor substitute. Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

The Supreme Court's inherent authority to promulgate rules in aid of its appellate jurisdiction includes power to require a court reporter to prepare and file a transcript of the evidence taken on the trial of a case, and cases holding to the contrary are overruled. Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

Court stenographer required to file transcript when notified to do so. Robertson v. Southern Bitulithic Co., 132 Miss. 892, 95 So. 638, 1923 Miss. LEXIS 10 (Miss. 1923).

4. Exhibits.

Failure of stenographer to mark deposition, documents and other evidence will not cause them to be stricken from record on appeal. Yazoo & M. V. R. Co. v. M. Levy & Sons, 141 Miss. 196, 106 So. 524, 1925 Miss. LEXIS 230 (Miss. 1925).

Ordinance held not properly made part of record on appeal where not identified or marked as exhibit by stenographer, nor certified to by clerk. Puyper v. Picayune, 134 Miss. 492, 99 So. 16, 1924 Miss. LEXIS 282 (Miss. 1924).

Where newspaper containing libelous matter was introduced in evidence but not marked as an exhibit and referred to in stenographer's notes, motion to strike bill of exceptions from record sustained, although newspaper was made an exhibit to the pleadings and so part of record, since no cross references were made thereto by the stenographer required by Rule 2 of the court. Richmond v. Enochs, 109 Miss. 14, 67 So. 649, 1915 Miss. LEXIS 108 (Miss. 1915).

OPINIONS OF THE ATTORNEY GENERAL

Circuit and Chancery court reporters may not be reimbursed for meals when they are traveling within district of employment to perform routine duties of office. Austin, Nov. 18, 1992, A.G. Op. #92-0701.

A court reporter is required, unless waived, for child support cases filed by the Department of Human Services, and such court reporters are to paid an annual salary provided by the several counties of each respective court district. Dennis, January 29, 1999, A.G. Op. #98-0799.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. 2d, Appeal and Error §§ 249 et seq.

§ 9-13-27. Custody of exhibits.

It shall be the duty of the court reporter to deliver to the clerk of the court in which any suit may be tried, at the conclusion of the trial, all depositions, exhibits, maps or other item of evidence, or matter of proceeding, introduced in evidence during the progress of the trial, and such clerk is hereby designated the custodian of such depositions, exhibits, maps or other item of evidence, or matter of proceeding, and he shall file and identify the same and, in the event an appeal to the supreme court shall be perfected in the suit, it shall be the duty of the clerk to correctly transcribe such depositions, exhibits, or other item of evidence, or matter or proceeding, and to cause a correct copy of any map to be made and to incorporate said copies of depositions, exhibits, maps, or other item of evidence, or matter of proceeding in the record of such suit to be filed with the supreme court. Provided, however, that upon order of the trial court any original exhibit shall be forwarded to the supreme court as a part of the record.

It shall be the duty of the clerk to safely keep in his custody all of such original depositions, exhibits, maps or other item of evidence, or matter of proceeding, until the final determination of the suit, or until the time has expired in which an appeal to the supreme court may be perfected.

HISTORY: Codes, 1930, § 722; 1942, § 1637; Laws, 1930, ch. 16.

JUDICIAL DECISIONS

1. In general.

Theft of real evidence from office of circuit court during appeal of murder conviction does not impermissibly deprive convicted defendant of right to appeal where defendant suffers no prejudice from loss of physical exhibits in that there is no contested issue of fact upon which light could be shed by viewing exhibits. Holmes v. State, 475 So. 2d 434, 1985 Miss. LEXIS 2194 (Miss. 1985).

In a proceeding against a city where maps were introduced by city and were withdrawn with the permission to substitute copies and the copies were never supplied, the city was in no position to invoke the rule that the appellant take such steps as are available for having an incomplete record made complete on appeal. Gaw v. Holly Springs, 228 Miss. 506, 87 So. 2d 252, 1956 Miss. LEXIS 540 (Miss. 1956).

OPINIONS OF THE ATTORNEY GENERAL

The chancery clerk is under no duty to retain exhibits in a particular matter where appeal time is long past or where he has received a court mandate affirming the lower court; owners of exhibits may petition the court and recover their property after the conclusion of the court cases; it is recommended, however, that the chancery clerk obtain a court order before destroying the exhibits. Castigliola, January 9, 1998, A.G. Op. #97-0791.

RESEARCH REFERENCES

Am. Jur.

4 Am. Jur. 2d, Appeal and Error §§ 249 et seq.

§ 9-13-29. Withdrawal of exhibits.

At any time prior to the expiration of the period allowed by law to perfect an appeal to the supreme court, or before the determination of the suit, any party to said suit, or any witness who may have testified therein, may, upon petition duly filed and presented to the court or presented to the trial judge thereof in vacation, and upon ten days notice to the opposite party or parties, or to one of his attorneys of record, in which notice the time and place of the presentation of the petition shall be given, obtain an order from the court or judge authorizing the clerk of the court to permit said petitioning party to withdraw from the clerk's custody, any exhibit, map or other item of evidence, which may be the property of said party or witness, if in the opinion of the court or judge such withdrawal shall be proper. Provided, however, the party or witness requesting the withdrawal shall cause a true copy of such exhibit, map, or other item of evidence, or matter of proceeding to be made by the clerk, and such clerk shall duly certify to the correctness of the copy, and such party or witness shall pay all fees authorized by law for making such copy and for such certificate; the clerk shall be required to make the copy and certificate upon the payment of such fees. Thereafter such certified copy of said exhibit, map or other item of evidence, or matter of proceedings shall remain in custody of the clerk, and during any hearing or trial of the cause and for all other purposes the duly certified copy of such exhibit, map or item of evidence, or matter of proceeding shall be deemed and considered as the true exhibit, map, item of evidence or matter of proceeding exhibited and introduced in such suit.

HISTORY: Codes, 1930, § 723; 1942, § 1638; Laws, 1930, ch. 16.

§ 9-13-31. Trial; reporting the trial.

In all criminal cases, and (a) in all civil cases, and (b) matters in probate, and (c) in matters of special proceedings, wherein property or demands of as much as Fifty Dollars ($50.00) may be in issue, no party shall be required without his consent to go to trial in a circuit or chancery court unless the case is attended by a court reporter; provided, however, that the judge of any chancery court may dispense with the requirement of a court reporter in hearings on temporary support and maintenance and/or temporary child custody in domestic cases unless one (1) or both of the parties request a court reporter. And in and by means of the court reporter's shorthand notes, it shall be competent and effectual, for the purposes of appeal and all otherwise, to make of the record every part of the proceedings arising and done during the trial, from the opening until the conclusion thereof, including motions so arising to amend the pleadings, except amendments to indictments, and the ruling of the court thereon and all other motions and steps that may occur in the trial, in addition to the oral testimony. And in such a trial, provided objections are duly made and noted, no exceptions need be taken, either for the purposes of appeal or otherwise, or if taken shall not be noted, to any ruling or decision of the court, and this provision shall include the rulings of a court on objections to testimony. If any ruling or decision of the court as to any matter arising during the trial appear in the copy of the court reporter's notes, it shall not be necessary to take any exceptions or bill of exceptions thereto. Exceptions and bills of exception shall be necessary only when it is desired to reserve exceptions to some ruling or decision of the court which would not otherwise appear of record. No bill of exceptions need be taken to the action of the court in overruling a motion for a new trial. In all cases tried either in the circuit or chancery court in which the evidence is taken down by an official court reporter, all pleadings and all papers filed or introduced in the case, all orders of the court entered on the minutes, all instructions and a copy of the court reporter's notes shall constitute the record and no bill of exceptions shall be necessary in order to make any of the above matters part of the record.

HISTORY: Codes, 1892, § 736; 1906, § 797; Hemingway's 1917, § 581; 1930, § 724; 1942, § 1639; Laws, 1896, ch. 83; Laws, 1910, ch. 111; Laws, 1989, ch. 446, § 1; Laws, 1990, ch. 407, § 1, eff from and after passage (approved March 15, 1990).

Cross References — Necessity of objections versus exceptions, for purposes of appeal, see Miss. R. Civ. P. 46.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Objections and exceptions.
3. Sufficiency and correctness of transcript.
4. Authentication of bill of exceptions.
5. Amendment or correction; perfecting record.
6. Amendments to indictments.
7. Matters of record.

1. In general.

It is not necessary to make a motion for a new trial grounded upon errors shown in the official transcript of the record, including the pleadings, transcribed evidence, verdict and judgment of the court. Colson v. Sims, 220 So. 2d 345, 1969 Miss. LEXIS 1459 (Miss. 1969).

Bill of exceptions embodying substance of evidence proper method of supplying omissions. Benjamin v. Virginia-Carolina Chemical Co., 126 Miss. 57, 87 So. 895, 1921 Miss. LEXIS 2 (Miss. 1921).

Bills of exceptions are statutory and must be prepared as provided by statute; unknown to common law. Richmond v. Enochs, 109 Miss. 14, 67 So. 649, 1915 Miss. LEXIS 108 (Miss. 1915).

The time limited for the preparation of a bill of exceptions does not begin to run until the decree is rendered. Speed v. McKnight, 76 Miss. 723, 25 So. 872, 1899 Miss. LEXIS 26 (Miss. 1899).

Only trial judge can make bill of exceptions; neither stenographer nor clerk can do so. McBride v. Adams, 70 Miss. 716, 12 So. 699 (Miss. 1893).

2. Objections and exceptions.

Supreme Court refused on appeal to consider alleged improper remarks of plaintiff's counsel in argument to jury where parties disagreed as to what they were and where there was no bill of exception disclosing them. New Orleans & N. R. Co. v. Bryant, 209 Miss. 193, 46 So. 2d 433, 1950 Miss. LEXIS 379 (Miss. 1950).

Where defendant failed to object to search warrant when offered in evidence but did request peremptory instruction, and, after trial, made motion in arrest of judgment, the supreme court will treat the question as though defendant made timely objection. Jenkins v. State, 207 Miss. 281, 42 So. 2d 198, 1949 Miss. LEXIS 338 (Miss. 1949).

Objection to argument in form of motion for mistrial made after jury retires is not timely made. Stevenson v. Robinson, 37 So. 2d 568 (Miss. 1948).

Argument of counsel will not be considered by supreme court on appeal in absence of bill of exceptions disclosing fact of such argument or ruling thereon by trial judge, and no motion for mistrial. Magnolia Miss Dress Co. v. Zorn, 204 Miss. 1, 36 So. 2d 795, 1948 Miss. LEXIS 337 (Miss. 1948).

Exceptions need not be taken to trial court's ruling and should not be noted in transcripts so as to add unlawfully to costs. Nicholson v. Bankers' & Shippers' Ins. Co., 164 Miss. 523, 145 So. 349, 1933 Miss. LEXIS 243 (Miss. 1933).

3. Sufficiency and correctness of transcript.

Under this section, in a case required to be attended by a court reporter, the entire trial proceedings, including a view of the premises in an eminent domain case, must be conducted with the court reporter present. Gunn v. Mississippi State Highway Com., 229 So. 2d 828, 1969 Miss. LEXIS 1258 (Miss. 1969).

Stenographer's transcript stricken, when not a transcript of evidence on which case tried. Roberts v. Lyon Co., 124 Miss. 345, 86 So. 851, 1920 Miss. LEXIS 516 (Miss. 1920).

4. Authentication of bill of exceptions.

Presumption is, in absence of contrary showing, that bill of exceptions was seasonably presented for approval and signature of judge. Cato v. Crystal Ice Co., 108 Miss. 667, 67 So. 155, 1914 Miss. LEXIS 258 (Miss. 1914).

A special judge commissioned under § 165, Constitution 1890, should approve the stenographer's notes and sign the bill of exceptions. Lopez v. Jackson, 79 Miss. 460, 31 So. 206, 1901 Miss. LEXIS 101 (Miss. 1901).

Under the Act of 1896 (Laws p. 91), where the evidence, and proceedings were noted by the official court reporter and such notes were written out, and the parties or their attorneys agreed in writing to their correctness, it was not necessary that the trial judge approve and sign them to make them part of the record. State v. Spengler, 74 Miss. 129, 20 So. 879, 1896 Miss. LEXIS 129 (Miss. 1896).

A special judge commissioned under § 165, Constitution 1890, before whom a case is tried, must sign the bill of exceptions, though presented after the term, as provided in the statute. Illinois C. R. Co. v. Bowles, 71 Miss. 994, 16 So. 235, 1894 Miss. LEXIS 6 (Miss. 1894); Lopez v. Jackson, 79 Miss. 460, 31 So. 206, 1901 Miss. LEXIS 101 (Miss. 1901).

5. Amendment or correction; perfecting record.

Perfecting record and making bill of exceptions is trial court's duty; if exhibits in record are illegible, making it difficult or impossible to copy them, circuit judge or chancellor may hear and determine matters involved and perfect bill of exceptions. Planters' Oil Mill v. Yazoo & M. V. R. Co., 150 Miss. 813, 117 So. 242, 1928 Miss. LEXIS 167 (Miss. 1928), overruled, Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

Correction of errors in bill of exceptions, where testimony is taken down by court's stenographer, must take place in trial court except as provided by statute. Williams v. W. M. Hardee & Son, 140 Miss. 151, 106 So. 16, 1925 Miss. LEXIS 243 (Miss. 1925).

Bill of exceptions can be amended only with consent of trial judge. Ladnier v. Ingram Day Lumber Co., 122 Miss. 577, 84 So. 385, 1920 Miss. LEXIS 455 (Miss. 1920).

6. Amendments to indictments.

Amendment to indictment must be by order of court which must precisely specify amendment, and order must be spread on minutes. Thomas v. State, 167 Miss. 504, 142 So. 507, 1932 Miss. LEXIS 205 (Miss. 1932).

When order permitting amendment of indictment is made it is unnecessary that trial be suspended until clerk records order on minutes. Thomas v. State, 167 Miss. 504, 142 So. 507, 1932 Miss. LEXIS 205 (Miss. 1932).

7. Matters of record.

Where there was a variance between the indictment and proof in prosecution for receiving stolen property, and the trial judge sustained a motion for amendment of the indictment, but there was no written order for the amendment entered on the minutes, the variance was not eliminated by the action of the court in sustaining the motion. Hitt v. State, 217 Miss. 61, 63 So. 2d 665, 1953 Miss. LEXIS 411 (Miss. 1953).

While remarks in argument to jury by district attorney in criminal prosecution can be shown either by special bill or exceptions or the reporter's notes, in either case they must be shown before the Supreme Court can know whether they were harmful. Strong v. State, 199 Miss. 17, 23 So. 2d 750, 1945 Miss. LEXIS 266 (Miss. 1945).

Defendant in tort action could not complain of court's action in sustaining demurrer to defendant's plea of nil debit and counterclaim, where trial court thereupon dictated into the record, as permitted by this section, his ruling to the effect that the case should proceed to trial as if the plea interposed was one of proper general issue, under which ruling the case so proceeded. Moore v. Abdalla, 197 Miss. 125, 19 So. 2d 502, 1944 Miss. LEXIS 281 (Miss. 1944).

Where master did not sign amendment to his report purporting to incorporate stenographer's transcript of evidence taken before him, transcript did not become a part of record, and, in absence of compliance with statute relating to making transcript a part of record, transcript could not be considered by reviewing court on appeal. Spitchley v. Covington, 181 Miss. 678, 177 So. 31, 1937 Miss. LEXIS 133 (Miss. 1937).

Where trial of accused for possession of intoxicating liquor was noted by official reporter and no transcript was made because no notice was given until expiration of statutory time, bill of exceptions setting out evidence sworn to by counsel for accused, presented to but not approved by trial judge, and as to correctness of which Attorney General did not agree, was not properly before court on appeal and no notice could be taken thereof under statute. Stewart v. State, 179 Miss. 31, 174 So. 579, 1937 Miss. LEXIS 22 (Miss. 1937).

In view of this section, statute requiring chancery courts, upon request of party, to find facts specifically and separately state their conclusions of law therefrom, and providing that such findings and conclusions shall be entered of record, is easily complied with without any sort of necessity for delay. General Tire & Rubber Co. v. Cooper, 176 Miss. 491, 165 So. 420, 167 So. 801, 1936 Miss. LEXIS 97 (Miss. 1936).

Supreme Court cannot look to briefs to supply that which is not of record on appeal. Alexander v. Hancock, 174 Miss. 482, 164 So. 772, 165 So. 126, 1935 Miss. LEXIS 91 (Miss. 1935).

The purpose and effect of the statute requiring the chancellor to make a finding of facts upon request of a party is to include the opinion of the chancellor as a material part of the record. Bullard v. Citizens' Nat. Bank, 173 Miss. 450, 160 So. 280, 162 So. 169, 1935 Miss. LEXIS 200 (Miss. 1935).

Where plaintiff's demurrer to defendant's special plea in bar was dictated into record, it became part of reporter's record of trial. Peck & Hills Furniture Co. v. Greer, 166 Miss. 249, 148 So. 387 (Miss. 1933).

Motion for new trial, specifying exclusion of statement signed by plaintiff as ground therefor, held unnecessary to present such error on appeal, since a motion for new trial is only necessary to bring to trial court's attention matters not embraced in the rulings during the trial, as taken down by the stenographer. Weyen v. Weyen, 165 Miss. 257, 139 So. 856 (Miss. 1932).

Pleadings and replication already in Supreme Court on first appeal should be omitted from record on subsequent appeal. Yazoo & M. V. R. Co. v. M. Levy & Sons, 147 Miss. 211, 113 So. 325, 1927 Miss. LEXIS 345 (Miss. 1927).

Special "bill of exceptions" not signed by chancellor did not belong in record. Kline v. Sims, 113 So. 190 (Miss. 1927).

Chancellor's opinion was properly made part of record on appeal. Kline v. Sims, 113 So. 190 (Miss. 1927).

Failure of stenographer to mark deposition, documents and other evidence will not cause them to be stricken from record on appeal. Yazoo & M. V. R. Co. v. M. Levy & Sons, 141 Miss. 196, 106 So. 524, 1925 Miss. LEXIS 230 (Miss. 1925).

Proceedings on petition to amend exceptions should not be included in record. Ladnier v. Ingram Day Lumber Co., 122 Miss. 577, 84 So. 385, 1920 Miss. LEXIS 455 (Miss. 1920).

Peremptory instruction granted, marked filed by clerk, excepted to, became part of record reviewable on appeal without motion for new trial. McCorkle v. Illinois C. R. Co., 101 Miss. 124, 57 So. 419, 1911 Miss. LEXIS 106 (Miss. 1911).

RESEARCH REFERENCES

ALR.

Right to have reporter's notes read to jury. 50 A.L.R.2d 176.

Am. Jur.

4 Am. Jur. 2d, Appeal and Error §§ 237 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Appeal and Error, Form 64.1 (Notice-To clerk to prepare reporter's transcript-Another form).

§ 9-13-32. Trial; attorney of record or interested entity may have proceeding recorded where official court reporter is not provided.

Any attorney of record or interested entity in any cause pending in a court, including justice court, which does not provide an official court reporter, may, in the discretion of the attorney or interested entity, record or have recorded any court proceeding in the cause by mechanical means or stenographically. Any expenses incident thereto shall be borne by the party or parties represented by the entity or attorney of record. The record of the court proceeding shall be used for impeachment purposes only. An interested entity includes, but is not limited to, the victim of a crime or a property owner on whose property a crime has been committed.

HISTORY: Laws, 1975, ch. 317; Laws, 2017, ch. 356, § 1, eff from and after July 1, 2017.

JUDICIAL DECISIONS

1. In general.

Trial judge did not abuse the judge's discretion in denying the plaintiffs' request for their own, separately retained court reporter to transcribe a summary judgment hearing because the plaintiffs' did not have a statutory right, under Miss. Code. Ann. § 9-13-32, to transcribe the summary judgment hearing. Furthermore, there was no applicable rule justifying the adoption of such a mandatory transcription rule for dispositive motion hearings. Palermo v. LifeLink Found., Inc., 152 So. 3d 1177, 2014 Miss. App. LEXIS 14 (Miss. Ct. App.), aff'd, 152 So. 3d 1099, 2014 Miss. LEXIS 578 (Miss. 2014).

OPINIONS OF THE ATTORNEY GENERAL

For actions pending in a court which does not provide an official court reporter, an attorney of record may choose to use a tape recorder or other means of recording the proceedings. Pittman, July 25, 1997, A.G. Op. #97-0442.

§§ 9-13-33 through 9-13-41. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

§ 9-13-33. [Codes, 1892, § 736; 1906, § 797; Hemingway's 1917, § 582; 1930, § 725; 1942, § 1640; Laws 1896, ch. 83; Laws, 1910, ch. 111; Laws, 1926, ch. 156; Laws, 1936, ch. 236; Laws, 1958, ch. 273; Laws, 1962, ch. 305, §§ 1-4; Laws, 1964, ch. 325, §§ 1-4; Laws, 1971, ch. 442, § 1; Laws, 1975, ch. 354, § 1; Laws, 1982, ch. 361]

§ 9-13-35. [Codes, 1930, § 726; Laws, 1942, § 1641; Laws, 1926, ch. 156]

§ 9-13-37. [Codes, 1892, § 736; 1906, § 797; Hemingway's 1917, § 583; 1930, § 727; 1942, § 1642; Laws, 1896, ch. 83; Laws, 1910, ch. 111; Laws, 1920, ch. 145]

§ 9-13-39. [Codes 1892, § 736; 1906, § 797; Hemingway's 1917, § 585; 1930, § 728; 1942, § 1643; Laws, 1896, ch. 83; Laws, 1910, ch. 111; Laws, 1920, ch. 145]

§ 9-13-41. [Codes, 1892, § 736; 1906, § 797; Hemingway's 1917, § 585; 1930, § 729; 1942, § 1644; Laws, 1896, ch. 83; Laws, 1910, ch. 111; Laws, 1920, ch. 145; Laws, 1950, ch. 350]

Editor's Notes — Former § 9-13-33 provided for transcripts of trials, requests for transcripts or parts thereof, and costs of transcripts.

Former § 9-13-35 provided for the filing of transcripts with the court clerk, and the making of corrections to transcripts.

Former § 9-13-37 allowed a court reporter to request additional time to transcribe the transcript of a trial.

Former § 9-13-39 prohibited the striking of a transcript unless the transcript was shown to be incorrect.

Former § 9-13-41 specified the contents of a record on appeal.

§ 9-13-43. Transcript as prima facie correct; use as evidence.

When a transcript has been made by the official reporter and certified to as being a correct transcript of notes, tapes or audio records of the testimony and other proceedings of the trial, the same shall be prima facie a correct statement thereof and may thereafter be introduced and read in evidence in the trial of any case in any state court of the state of Mississippi, without the necessity of further identification, provided such matter is otherwise admissible.

HISTORY: Codes, 1942, § 1636.1; Laws, 1958, ch. 280, § 2.

§ 9-13-45. Penalty for wilful neglect of duty.

If the court reporter willfully neglects to perform any duty required of him by law, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, may be fined not exceeding Five Hundred Dollars ($500.00), or imprisoned not more than six (6) months. Moreover, he shall be liable to a deduction from his salary at the rate of Ten Dollars ($10.00) a day for each day that he shall be in such default, which deduction shall be made by the court when it authorizes his salary to the Administrative Office of the Courts, and in addition thereto he shall be liable on his bond to the party injured for all damages which may be sustained by reason of his neglect of duty. If any court reporter shall neglect or refuse to transcribe his official notes and to file such transcript within the time and in the manner required by law, or by order of the court or judge, he shall be liable upon his bond for a penalty in the amount of Two Hundred Fifty Dollars ($250.00), to be recovered by the party aggrieved thereby, whether the person aggrieved has suffered any actual damage or not.

HISTORY: Codes 1892, § 4243; 1906, § 4793; Hemingway's 1917, § 3146; 1930, § 730; 1942, § 1645; Laws, 1993, ch. 518, § 40, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Since a bill of exceptions may be prepared and filed, the failure of the court reporter to transcribe the notes of the trial is not an excuse for delays in completing the record for appeal, and the continuance would be granted in a case, which was first returnable in the Supreme Court almost one year earlier, on condition that the record would be filed in the court within approximately two months. Motor Supply Co. v. Hunter, 251 Miss. 837, 164 So. 2d 410, 171 So. 2d 870, 1964 Miss. LEXIS 539, 1965 Miss. LEXIS 909 (Miss. 1964).

Neglect of the court reporter does not relieve the appellant or counsel from a duty to comply with the statutory directions. Warren v. State, 165 Miss. 783, 144 So. 698, 1932 Miss. LEXIS 293 (Miss. 1932), overruled, Brown v. Water Valley, 319 So. 2d 649, 1975 Miss. LEXIS 1481 (Miss. 1975).

Where appointed stenographer who took part of testimony during illness of regular stenographer refused to transcribe and deliver that part taken by him, regular stenographer was not liable to penalty for failure to transcribe and file all or that part of record taken by him. Johnson v. Ward, 102 Miss. 464, 59 So. 806, 1912 Miss. LEXIS 75 (Miss. 1912).

§ 9-13-61. Official county and family court reporter.

There shall be an official court reporter for each county and family court judge in the State of Mississippi, to be appointed by such judge, for the purpose of performing the necessary and required stenographic work of the court or division thereof over which the appointing judge is presiding, said work to be performed under the direction of such judge and in the same manner and to the same effect as is provided in the chapter on court reporting.

Except as hereinafter provided, the reporters of said courts shall receive an annual salary of not less than Twenty-four Thousand Dollars ($24,000.00) and may, at the discretion of the board of supervisors, receive a monthly salary equal to that of the reporter of the circuit court district wherein the county lies, the same to be paid monthly by the county out of its general fund.

Provided, however, that in any Class 1 county having a population in excess of fifty-six thousand (56,000) persons according to the 1970 federal decennial census, the reporter shall receive a monthly salary equal to that of the reporter of the circuit court district wherein the county or family court lies, the same to be paid monthly by the county out of its general fund.

Provided further, that in any Class 1 county bordering on the Mississippi River and which has situated therein a national military park and national military cemetery, and having a population in excess of forty-four thousand (44,000) according to the 1970 federal decennial census, the reporter shall receive a monthly salary equal to that of the reporter of the circuit court district wherein the county lies, the same to be paid monthly by the county out of its general fund.

Provided further, that in any Class 1 county bordering on the Mississippi River wherein U.S. Highways 61 and 84 intersect, and having a population in excess of thirty-seven thousand (37,000) in the 1960 federal decennial census, the reporter shall receive a monthly salary equal to that of the reporter of the circuit court district wherein the county lies, the same to be paid monthly by the county out of its general fund.

Provided further, that in addition to the foregoing compensation, all county and family court reporters shall be paid the same fees for transcript of the record on appeals as are now or hereafter paid circuit court reporters for like or similar work.

HISTORY: Codes, 1930, § 700; 1942, § 1611; Laws, 1926, ch. 131; Laws, 1928, ch. 219; Laws, 1948, ch. 224; Laws, 1950, ch. 355; Laws, 1952, ch. 240; Laws, 1956, ch. 232; Laws, 1960, ch. 235; Laws, 1966, ch. 346, § 1; Laws, 1966 Ex sess, ch. 24 § 1; Laws, 1968, ch. 333, § 1; Laws, 1968, ch. 311, § 3; Laws, 1970, ch. 395, § 2; Laws, 1975, ch. 385; Laws, 1977, ch. 447, § 1; Laws, 1985, ch. 510, § 2; Laws, 1997, ch. 432, § 1, eff from and after October 1, 1997.

Editor's Notes — Laws, 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

Cross References — Appointment of additional county court reporters and their compensation, see § 9-13-17.

JUDICIAL DECISIONS

1. In general.

On appeal from county court to circuit court in eminent domain proceeding, appellants must give notice to stenographer to transcribe notes, as prescribed by statutes relating to court reporters. Mississippi State Highway Dep't v. Haines, 162 Miss. 216, 139 So. 168, 1932 Miss. LEXIS 121 (Miss. 1932).

OPINIONS OF THE ATTORNEY GENERAL

Counties may not pay the premium on the required bond for official court reporters of the chancery and circuit court, but may pay the premium for the bonds of county court reporters and may pay the dues for the membership of the county court reporter in the court reporter's association upon making a determination that such dues are reasonable and necessary to the performance of the court reporter's duties. Ross, February 26, 1999, A.G. Op. #99-0053.

RESEARCH REFERENCES

ALR.

Attorney's personal liability for expenses incurred in relation to services for client. 15 A.L.R.3d 531.

Am. Jur.

20 Am. Jur. 2d, Courts §§ 1- 7.

§ 9-13-62. Repealed.

Repealed by Laws, 1977, ch. 447, § 2, eff from and after October 1, 1977. § 9-13-62. [Code, 1942, § 1633; en Laws, 1973, ch. 484, § 1]

Editor's Notes — Former § 9-13-62 set the salaries of court reporters in certain counties.

§ 9-13-63. County court reporter fees as items of costs.

In all cases filed in the county court, a court reporter's fee shall be charged as an item of cost as follows: A fee of one dollar ($1.00) shall be charged in all cases which, if there were no county court, would have been filed in the justice of the peace court; a fee of two dollars ($2.00) shall be charged in all cases appealed to the county court and a fee of three dollars ($3.00) shall be charged in all cases which, if there were no county court, would be filed in the circuit or chancery courts. All of said reporter's fees above mentioned are to be paid into the general fund of the county; provided, however, that no jury tax shall be charged in any case unless there is an issue joined and no court reporter's fee shall be charged unless issue has been joined in such case and testimony taken.

HISTORY: Codes, 1942, § 1611.5; Laws, 1970, ch. 395, § 3, eff from and after July 1, 1970.

Cross References — Tax fees of circuit and chancery court reporters, see § 9-13-21.

Fee for transcript of testimony and exhibits to testimony, or copy of such transcript and exhibits, see § 25-7-89.

BOARD OF CERTIFIED COURT REPORTERS

Sec.
9-13-101. Board of Certified Court Reporters; membership; terms of office.

Sec.
9-13-103. Meetings of board; officers; mailing address.
9-13-105. Duties and powers of board.
9-13-107. Certification of reporters required; application for certification examination.
9-13-109. Requirements for certification.
9-13-111. Issuance of certification without examination; requirements.
9-13-113. Official court reporters must be certified shorthand reporters; exception for temporary reporters.
9-13-115. Free-lance and nonresident reporters.
9-13-117. Revocation or suspension of certificate; disqualification.
9-13-118. Practicing court reporting without certification; filing false information to obtain certification; penalties.
9-13-119. Annual certification fee; renewal of certification; disposition of funds.
9-13-121. Giving of examinations for certification; notice; effect of not passing examination; temporary certificates; photo identification.
9-13-123. Definitions; effect of chapter on courts and individual's rights.

§ 9-13-101. Board of Certified Court Reporters; membership; terms of office.

(1) The Board of Certified Court Reporters, hereinafter referred to as "the board," shall be composed of nine (9) members. Two (2) of the members shall be judges, one (1) from the Supreme Court and one (1) from a trial court, appointed by the Chief Justice of the Supreme Court of Mississippi with the approval of the full court. Two (2) of the board members shall be practicing attorneys and shall be appointed by the Chief Justice, with the approval of the full court, on nomination by the Mississippi Bar. Two (2) of the members shall be official court reporters in, and citizens of, Mississippi for at least five (5) years prior to their appointments and shall be appointed by the Chief Justice with approval of the full court on nomination by the Board of Directors of the Mississippi Court Reporters Association. Two (2) of the members shall be free-lance court reporters in, and citizens of, Mississippi for at least five (5) years prior to their appointments and shall be appointed by the Chief Justice with approval of the full court on nomination by the Board of Directors of the Mississippi Court Reporters Association. Initially, for judges, lawyers and reporters, one (1) of the two (2) shall be appointed for a term of one (1) year and one (1) for a term of two (2) years. For court reporters, one (1) official shall be appointed for a term of one (1) year and one (1) for a term of two (2) years and one (1) free-lance court reporter shall be appointed for a term of one (1) year and one (1) for a term of two (2) years. The ninth board member shall be the Supreme Court Clerk, who shall serve as a permanent member of the board.

(2) After each member's term expires, his successor shall be appointed for a term of two (2) years. The Chief Justice of the Supreme Court shall fill any vacancy for the duration of an unexpired term by appointing a person having the appropriate qualifications and the Supreme Court may remove any member for cause. Members may be appointed to successive terms.

(3) Each member shall take an oath that he will fairly, impartially and to the best of his ability administer the provisions of Sections 9-13-101 through 9-13-121.

HISTORY: Laws, 1994, ch. 599, § 10, eff from and after July 2, 1994.

Cross References — Rule governing creation, appointment, duties, powers, etc. of the Board of Certified Court Reporters, see Rules and Regulations Governing Certified Court Reports, Rule II.

§ 9-13-103. Meetings of board; officers; mailing address.

The Supreme Court shall specify a date for the first meeting of the board, at which the board will organize itself by electing one (1) of its members chairman and electing such other officers as deemed appropriate. The office of the Supreme Court shall be the permanent mailing address for all applications or correspondence of the board. The board shall hold its meetings not less than once a year at such times and places as the board shall designate.

HISTORY: Laws, 1994, ch. 599, § 11, eff from and after July 2, 1994.

§ 9-13-105. Duties and powers of board.

The board is charged with the duty and vested with the power and authority:

(a) To determine the content of and administer examinations to be given to applicants for certification as a court reporter.

(b) To determine an applicant's ability to make a verbatim record of proceedings which may be used in any court in this state by any recognized system designated by the board and to pass upon the eligibility of applicants for certification.

(c) To issue certificates to those found qualified as court reporters who are in compliance with Section 9-13-109.

(d) To promulgate, amend and revise regulations relevant to its duties as necessary to implement this chapter. Such regulations shall be consistent with the provisions of Sections 9-13-101 through 9-13-121 and shall not be effective until approved by the Supreme Court.

(e) To make studies and, from time to time, recommendations to the Supreme Court concerning matters pertaining to court reporters.

(f) To account to the Supreme Court in all fiscal matters following recognized accounting procedures of the State Auditor.

(g) To exercise jurisdiction over disciplinary matters with regard to certified court reporters, those reporters granted temporary permission as noncertified or nonresident court reporters, those holding themselves out in the State of Mississippi to be court reporters and anyone engaged in the unauthorized practice of court reporting within the State of Mississippi in accordance with rules and regulations adopted by the board.

(h) To enter into contracts, hire staff and do such other things as may be necessary to implement the provisions of Sections 9-13-101 through 9-13-121.

HISTORY: Laws, 1994, ch. 599, § 12; Laws, 2011, ch. 311, § 1, eff from and after July 1, 2011.

§ 9-13-107. Certification of reporters required; application for certification examination.

No person shall be qualified or authorized to report testimony or proceedings relevant to matters under the jurisdiction of the courts of the State of Mississippi, all state agencies or the Legislature or any committee or subcommittee thereof, or where appeal to any court of the State of Mississippi is allowable by law, unless such person satisfies the provisions of Sections 9-13-101 through 9-13-121 with respect to certification. Sections 9-13-101 through 9-13-121 shall not be construed to apply to any proceedings that take place outside the borders of the State of Mississippi.

Every applicant for examination for certification as a Certified Shorthand Reporter shall file with the person designated by the board a written application in the form prescribed by the board. At the time the application is filed, the applicant shall pay to the board an application fee established by regulation, which fee shall not be subject to withdrawal by the applicant in the event he should decide not to take the examination or is denied the right to take the examination. Upon request, the board shall forward to any interested person application forms together with the text of this chapter and copies of regulations promulgated by the board under the provisions of this chapter.

HISTORY: Laws, 1994, ch. 599, § 13, eff from and after July 2, 1994.

§ 9-13-109. Requirements for certification.

Every applicant for certification shall have reached the age of majority, be of good moral character and be a resident citizen of the State of Mississippi. Further, every applicant shall meet the criteria established by the board for certification or shall meet the requirements of Section 9-13-109.

HISTORY: Laws, 1994, ch. 599, § 14, eff from and after July 2, 1994.

§ 9-13-111. Issuance of certification without examination; requirements.

Upon application and payment of the application fee within six (6) months of July 2, 1994, and upon a showing of residence within the State of Mississippi, certification without examination shall issue to:

(a) Any official court reporter serving on January 3, 1996, in a Mississippi court on a full-time basis, if such reporter is actually engaged in verbatim reporting through shorthand symbols or the stenomask method.

(b) Any free-lance reporter actually engaged in verbatim reporting through shorthand symbols or the stenomask method and who had been so engaged as of July 2, 1994.

(c) Any person enrolled in any public or private institution in the State of Mississippi on July 2, 1994, who is majoring in a course of study in court reporting and who receives a degree in such course of study.

HISTORY: Laws, 1994, ch. 599, § 15; Laws, 1996, ch. 484, § 1, eff from and after passage (approved April 11, 1996).

§ 9-13-113. Official court reporters must be certified shorthand reporters; exception for temporary reporters.

After July 2, 1994, no judge of any court of this state shall appoint an official court reporter who is not a certified shorthand reporter. In the event of a vacancy, a judge may appoint a temporary reporter; but such temporary reporter shall, within thirty (30) days of such appointment, make application for temporary certification and shall not serve for more than six (6) months without having obtained a permanent certification under Sections 9-13-101 through 9-13-121, except as provided by Section 9-13-121(3).

HISTORY: Laws, 1994, ch. 599, § 16, eff from and after July 2, 1994.

§ 9-13-115. Free-lance and nonresident reporters.

(1) Free-lance reporters shall make application for certification in the manner prescribed in Section 9-13-105. Without satisfying the requirements of this chapter, no free-lance reporter shall make a verbatim record of any testimony of a proceeding, jurisdiction of which is within the courts of Mississippi or where appeal to any court of the State of Mississippi is allowable by law.

(2) Any court reporter not a resident of Mississippi wishing to make a verbatim record or transcript of testimony to be used in a legal proceeding within the State of Mississippi may do so upon obtaining temporary permission from the board or the judge of any court of record, such permission not to be valid for more than thirty (30) days unless special conditions are established therein by the board or judge from whom the temporary permission was obtained.

HISTORY: Laws, 1994, ch. 599, § 17, eff from and after July 2, 1994.

§ 9-13-117. Revocation or suspension of certificate; disqualification.

The board, for good cause shown and in keeping with its regulations and after a hearing conducted in a manner consistent with due process, may revoke or suspend any certificate issued or may disqualify any applicant from certification.

HISTORY: Laws, 1994, ch. 599, § 18, eff from and after July 2, 1994.

§ 9-13-118. Practicing court reporting without certification; filing false information to obtain certification; penalties.

(1) Any person who: (a) undertakes or attempts to undertake the practice of court reporting for remuneration without having first procured a certificate

or temporary permission under Sections 9-13-101 through 9-13-123; or (b) knowingly files false information with the board for the purpose of obtaining certification or temporary permission under Sections 9-13-101 through 9-13-123, shall be subject to a civil fine to be imposed by the board of Five Hundred Dollars ($500.00).

(2) Each day's violation shall be considered a separate infraction.

(3) A person who is not authorized to practice court reporting under Sections 9-13-101 through 9-13-123 shall not bring or maintain an action to recover fees for court reporting services that the person performed in violation of this section.

HISTORY: Laws, 2011, ch. 311, § 2, eff from and after July 1, 2011.

§ 9-13-119. Annual certification fee; renewal of certification; disposition of funds.

(1) All Certified Shorthand Reporters and Certified Stenomask Reporters shall pay to the board an annual certification fee established by the board. All certificates issued under the provisions of this chapter shall expire one (1) year from the date of issue. Applications for renewal of certification shall be accompanied by the required annual certification fee.

(2) All funds collected under the provisions of this chapter shall be deposited into a special fund, hereby created in the State Treasury. All expenses incurred by the board in implementing the provisions of this chapter shall be paid out of such special fund pursuant to legislative appropriation.

HISTORY: Laws, 1994, ch. 599, § 19, eff from and after July 2, 1994.

§ 9-13-121. Giving of examinations for certification; notice; effect of not passing examination; temporary certificates; photo identification.

(1)(a) Except as otherwise provided in paragraph (b) of this subsection (1), any person graduating from a court reporting school approved by the State of Mississippi or some other state shall be given a temporary certification but shall make application for and pass a Certified Shorthand Reporter's (CSR) examination as is provided in this section.

(b) Any person who is enrolled in a court reporting program or court reporting school, whether in Mississippi or out of state, that is accredited by the National Court Reporting Association, and who graduates prior to November 1, 2008, shall be granted certification without examination.

(2)(a) The Board of Court Reporters shall implement a true CSR examination wherein all examinees are given the option to take any part or parts of the examination independent of the other parts; however, each part, once passed, need not be retaken by that examinee. Any applicant granted a temporary certification or permit shall be allowed not less than thirty-six (36) months after being granted the temporary certification or permit to pass the examination.

(b)(i) Examinations for certification shall be given not less than every six (6) months at a time and place designated by the board. Notification of such examinations shall be given each applicant in writing not less than thirty (30) days before each examination date. Proof of notice of an examination having been sent less than thirty (30) days before an examination date shall automatically extend a temporary certificate for an additional six (6) months beyond what is otherwise provided in this section.

(ii) If an applicant holding temporary certification has not qualified for certification within the required time, the applicant shall be permitted a hearing before the board. If said applicant has passed at least two (2) parts of the examination, the applicant will be given an additional extension of not more than one (1) year.

(iii) If a court reporter is unavailable, the use of audio or video equipment shall be authorized.

(3) Those reporters holding temporary certificates must submit their applications, together with the fee, to the board and take the next scheduled examination. If the applicant holding temporary certification has not qualified for certification within the required time, the applicant shall be deemed unqualified to serve as a reporter until the applicant passes the examination and receives permanent certification or has been granted an extension according to subsection (2).

(4) Photo identification may be required of any applicant prior to the taking of an examination for security reasons only but shall not be used for discrimination against applicants on the basis of race, gender, age, creed or national origin.

HISTORY: Laws, 1994, ch. 599, § 20; Laws, 2000, ch. 402, § 1; Laws, 2003, ch. 479, § 1, eff from and after passage (approved Apr. 10, 2003).

§ 9-13-123. Definitions; effect of chapter on courts and individual's rights.

As used in Sections 9-13-101 through 9-13-121:

(a) "Courts" includes all courts. Nothing in this chapter shall be construed as a limitation upon the power of the Supreme Court or of the trial courts to govern the conduct of, and to discipline, official court reporters, nor shall this chapter be construed as any limitation upon the rights of any individual to seek any remedy afforded by law, nor as any exclusive mode of regulating court reporters.

(b) "Court reporter" means a Certified Shorthand Reporter or a Certified Stenomask Reporter.

(c) "The practice of court reporting" means the making of a verbatim record by means of written symbols or abbreviations in pen shorthand, machine shorthand, or oral stenography, also known as steno mask, of testimony or proceedings relevant to matters under the jurisdiction of the courts of the State of Mississippi, all state agencies or the Legislature or any committee or subcommittee thereof, or where appeal to any court of the State of Mississippi is allowable by law.

(d) "The making of a verbatim record" includes the taking of a deposition.

HISTORY: Laws, 1994, ch. 599, § 21; Laws, 2011, ch. 311, § 3, eff from and after July 1, 2011.

CHAPTER 15.

JUDICIAL COUNCIL
[REPEALED]

Sec.
9-15-1 through 9-15-9. Repealed.

§§ 9-15-1 through 9-15-9. Repealed.

Repealed by Laws, 1977, ch. 429, § 6, eff from and after June 30, 1980.
§§ 9-15-1 through 9-15-9. [En Laws, 1977, ch. 429, §§ 1-5]

Editor's Notes — Former § 9-15-1 established the judicial council and provided for its membership, terms, filling vacancies, organizational meeting, and officers.

Former § 9-15-3 provided for meetings of the judicial council.

Former § 9-15-5 fixed the duties of the judicial council.

Former § 9-15-7 provided for the reimbursement of expenses of judicial council members.

Former § 9-15-9 directed state and local officers and agencies and political subdivisions of the state to provide assistance and information to the judicial council upon request, but restricted the council from obtaining statutorily protected information or information not relevant to judicial functions.

CHAPTER 17.

COURT ADMINISTRATORS

Sec.

9-17-1. Establishment of office; appointment and compensation of court administrator.
9-17-3. Duties of court administrator.
9-17-5. Court administration special fund.

§ 9-17-1. Establishment of office; appointment and compensation of court administrator.

(1) The judges and chancellors of judicial districts, including chancery, circuit and county courts, may, in their discretion, jointly or independently, establish the office of court administrator in any county by an order entered on the minutes of each participating court in the county.

The establishment of the office of court administrator shall be accomplished by vote of a majority of the participating judges and chancellors in the county, and such court administrator shall be appointed by vote of a majority of the judges or chancellors and may be removed by a majority vote of the judges or chancellors. In case of a tie vote, the senior judge or senior chancellor shall cast two (2) votes.

(2) The court administrator shall be provided office space in the same manner as such is afforded the judges and chancellors.

(3) The annual salary of each court administrator appointed pursuant to this section shall be set by vote of the judges and chancellors of each participating county and shall be submitted to the Administrative Office of Courts for approval pursuant to Section 9-1-36. The salary shall be paid in twelve (12) installments on the last working day of the month by the Administrative Office of Courts after it has been authorized by the participating judges and chancellors and an order has been duly placed on the minutes of each participating court.

Any county within a judicial district having a court administrator shall transfer to the Administrative Office of Courts one-twelfth ($1/1_2$) of its pro rata cost of authorized compensation as defined in Section 9-1-36 for the court administrator by the twentieth day of each month for the compensation that is to be paid on the last day of that month. The board of supervisors may transfer the pro rata cost of the county from the funds of that county pursuant to Section 9-17-5(2)(b).

(4) For all travel required in the performance of official duties, the court administrator shall be paid mileage by the county in which the duties were performed at the same rate as provided for state employees in Section 25-3-41, Mississippi Code of 1972. The court administrator shall file a certificate of mileage expense incurred during that term with the board of supervisors of each participating county and payment of such expense shall be paid proportionately out of the court administration fund established pursuant to Section 9-17-5.

HISTORY: Laws, 1978, ch. 531, § 2; Laws, 1993, ch. 518, § 41; Laws, 1994, ch. 506, § 2, eff from and after passage (approved March 23, 1994).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

Cross References — Rules governing certification and continuing education for court administrators, see Rules and Regulations for Certification and Continuing Education for Mississippi Court Administrators 1 et seq.

JUDICIAL DECISIONS

1. In general.

Section 9-17-1, combined with the approval of the Youth Court budget, as mandated by §§ 43-21-123 and 19-9-96, authorized a youth court judge's hiring of a youth court administrator who performed non-judicial, administrative functions of the youth court. Nelson v. State, 656 So. 2d 318, 1995 Miss. LEXIS 303 (Miss. 1995).

§ 9-17-3. Duties of court administrator.

It shall be the duty of the court administrator to:

(a) Perform all nonjudicial tasks of the court;

(b) Maintain all statistical reports;

(c) Serve as liaison with the general public and members of the bar;

(d) Coordinate and assist in the duties of the clerks of the courts of the district related to the judicial duties of the clerks;

(e) Provide general administrative support for all judges and chancellors of the district; and

(f) Perform other duties assigned by the judges.

HISTORY: Laws, 1978, ch. 531, § 3, eff from and after July 1, 1978.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 9-17-3 provides for court administrator's duties. Adams, Feb. 18, 1993, A.G. Op. #92-0954.

Based on Sections 9-21-1, 9-17-3 and 9-21-19, all statistical reports of a court should be prepared and maintained by the court administrator. However, any request for statistical data made by the AOC should be complied with by the receiver of such request. If the court administrator maintains all statistical data, then such a request should be made to the court administrator. Martin, May 31, 1996, A.G. Op. #96-0324.

The Youth Court Judge has the legal responsibility for administering the youth court detention facility, although the Youth Court Judge may delegate this function to his designee and may appoint a court administrator pursuant to the statute. Yancey, November 25, 1998, A.G. Op. #98-0615

§ 9-17-5. Court administration special fund.

(1) In each county where a court administrator has been appointed pursuant to this chapter, a special fund in the county treasury is hereby established to be known as the "court administration fund."

(2)(a) The judges and chancellors may apply their expense allowance in Section 9-1-36, Mississippi Code of 1972, to the court administration fund.

(b) The board of supervisors of any county within a judicial district having a court administrator is authorized to pay its pro rata cost of the salary and furnish an equipped office for the court administrator and his staff from county funds. The board of supervisors is further authorized to accept grants, gifts, donations or federal funds for the benefit of the office of the court administrator.

(c) The board of supervisors of any county within a judicial district having a court administrator is authorized, in its discretion, to charge, in addition to all other costs required by law, an amount not to exceed two dollars ($2.00) for each complaint filed in the chancery, circuit and county courts of such county. Any money collected pursuant to this subsection shall be paid into the court administrator fund.

(d) Money paid into the court administration fund under this chapter shall be applied to the office of the court administrator for the purpose of funding that office.

(3) All expenditures made from the court administration fund shall be upon written requisition of the court administrator approved by a judge or chancellor to the county or counties of the district designated by him, in proportion to the business of his office in the county.

HISTORY: Laws, 1978, ch. 531, § 4 1983, ch. 398, eff from and after July 1, 1983.

OPINIONS OF THE ATTORNEY GENERAL

Language of statute which authorizes county to pay its pro rata share of costs and to receive grants, gifts, donations or federal funds for benefit of court administrator's office, is to empower county to lawfully expend funds for court administrator's office, and was not intended to give county option of withdrawing from its obligation of paying its pro rata share of costs of court administrator's office. Slade, May 23, 1990, A.G. Op. #90-0346.

Two dollar ($2.00) fee must be established by board of supervisors and therefore must be reflected on board's minutes; likewise, statute specifically limits levying of two dollar ($2.00) fee to complaints filed in chancery, circuit and county courts, and thus could not be extended to justice court. Mosley, August 29, 1990, A.G. Op. #90-0646.

Miss. Code Section 9-17-5 provides for payment of court administrator from a special fund in county treasury. Adams, Feb. 18, 1993, A.G. Op. #92-0954.

Court administration fee applied only to chancery filings since only chancery administrator had been created. Sherard, August 5, 1993, A.G. Op. #93-0428.

CHAPTER 19.

COMMISSION ON JUDICIAL PERFORMANCE

Sec.

9-19-1. Membership.
9-19-3. Terms of office; prohibited activities of members; chairman.
9-19-5. Compensation.
9-19-7. Executive director; administrative staff.
9-19-9. Disqualification of commission member from acting on complaint.
9-19-11. Private admonishments.
9-19-13. Disqualification of judge during pendency of proceedings.
9-19-15. Retirement or disability of judge.
9-19-17. Removed judge as ineligible for judicial office; suspension from practice of law.
9-19-19. Secrecy of proceedings before commission.
9-19-21. Subpoena of witnesses; inspection of documents and records; information for use in impeachment or recall election; retention of records of complaints outside commission's jurisdiction.
9-19-23. Rules and regulations.
9-19-25. Receipt and expenditure of funds.
9-19-27. Annual report.
9-19-29. Privileged character of complaints; immunity from civil suit.
9-19-31. Judicial Performance Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

§ 9-19-1. Membership.

The Commission on Judicial Performance shall consist of the following members:

(a) One (1) circuit court judge to be appointed by the Chief Justice of the Supreme Court of Mississippi upon the recommendation of the Governor;

(b) One (1) chancellor to be appointed by the Chief Justice of the Supreme Court of Mississippi upon the recommendation of the Lieutenant Governor;

(c) One (1) county court judge to be appointed by the Chief Justice of the Supreme Court of Mississippi upon the recommendation of the Speaker of the House;

(d) One (1) justice court judge to be appointed by the Chief Justice of the Supreme Court of Mississippi;

(e) One (1) practicing attorney to be appointed by the Chief Justice upon the recommendation of the Governing Board of The Mississippi Bar; and

(f) Two (2) lay persons who shall not be residents of the same Supreme Court District to be appointed by the Chief Justice of the Supreme Court of Mississippi.

An alternate for each member shall be selected at the time and in the manner prescribed for initial appointments in each representative class to replace those members who might be disqualified or absent.

HISTORY: Laws, 1979, ch. 511, § 1; Laws, 1980, ch. 385, § 1; Laws, 1981, ch.

483, § 1; Laws, 1984, ch. 515; Laws, 2001, ch. 527, § 1, eff from and after July 1, 2001.

Cross References — Rules governing conduct of judges, see Code of Judicial Conduct, Canons 1 et seq.

Rules governing the jurisdiction, organization, procedures, etc. of the Commission on Judicial Performance, see Rules of the Mississippi Commission on Judicial Performance 1 et seq.

§ 9-19-3. Terms of office; prohibited activities of members; chairman.

The terms of office of the commission members shall be for six (6) years, except that the initial terms of office shall be as follows: the circuit court judge member for six (6) years, the chancellor member for five (5) years, the county court judge member for five (5) years, the justice court judge member for four (4) years, one (1) of the lay members for three (3) years, the other lay member for two (2) years, and the attorney member for one (1) year. Members shall not be allowed to succeed themselves after serving a full term. Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

No member of the commission, except a justice or judge, shall be eligible for state judicial office so long as he is a member of the commission and for a period of two (2) years thereafter. No member of the commission shall hold office in a political party or participate in any campaign for judicial office and hold public office; provided that a judge may participate in his own campaign for judicial office and hold that office. The commission shall elect one (1) of its members as its chairman.

HISTORY: Laws, 1979, ch. 511, § 2, eff from and after January 1, 1980.

§ 9-19-5. Compensation.

The members of the commission on judicial performance shall be reimbursed for all reasonable and necessary travel expenses and subsistence as may be incurred in the performance of their duties. Members of the commission who are judges shall serve without compensation. Other members of the commission shall receive a per diem in the amount authorized in Section 25-3-69, Mississippi Code of 1972, for each day or part thereof spent in performing their duties under this chapter.

HISTORY: Laws, 1979, ch. 511, § 8; Laws, 1997, ch. 404, § 1, eff from and after July 1, 1997.

§ 9-19-7. Executive director; administrative staff.

The commission may appoint and remove an executive director and such administrative staff as may be required. This staff shall report each charge filed to the commission.

HISTORY: Laws, 1979, ch. 511 § 9, eff from and after January 1, 1980.

§ 9-19-9. Disqualification of commission member from acting on complaint.

If a complaint is filed against a member of the commission, he shall be disqualified as to that complaint.

HISTORY: Laws, 1979, ch. 511, § 3, eff from and after January 1, 1980.

§ 9-19-11. Private admonishments.

The commission on judicial performance may privately admonish a justice or judge found to have been engaged in improper action or a dereliction of duty affecting the administration of justice; subject to review in the supreme court; provided, however, that all appeals from private admonishments shall remain confidential.

HISTORY: Laws, 1979, ch. 511, § 4, eff from and after January 1, 1980.

§ 9-19-13. Disqualification of judge during pendency of proceedings.

Except as otherwise provided in Section 25-3-36(7), on recommendation of the commission on judicial performance, the Supreme Court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings before the commission or in the supreme court. If so disqualified, a special judge shall be appointed to perform his duties, as provided by law.

HISTORY: Laws, 1979, ch. 511, § 5; Laws, 1990, ch. 426, § 3, eff from and after June 18, 1990 (the date the United States Attorney General interposed no objection to the amendment).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the first sentence by substituting "Section 25-3-36(7)" for "Section 25-3-36(6)." The Joint Committee ratified the correction at its August 17, 2015, meeting.

Cross References — Authority of board of supervisors to appoint judge to serve for justice court judge who is unable to serve for thirty consecutive days, see § 9-11-31.

RESEARCH REFERENCES

ALR.

Substitution of judge in state criminal trial. 45 A.L.R.5th 591.

§ 9-19-15. Retirement or disability of judge.

A justice or judge retired by the supreme court or the seven-member tribunal shall be considered to have retired voluntarily. The supreme court's finding of disability shall satisfy any certification of disability required by applicable retirement and disability law.

HISTORY: Laws, 1979, ch. 511, § 6, eff from and after January 1, 1980.

§ 9-19-17. Removed judge as ineligible for judicial office; suspension from practice of law.

A justice or judge removed by the supreme court or the seven-member tribunal is ineligible for judicial office, and pending further order of the court, may be suspended from practicing law in this state.

HISTORY: Laws, 1979, ch. 511, § 7, eff from and after January 1, 1980.

§ 9-19-19. Secrecy of proceedings before commission.

All commission members, staff, witnesses or any other person privy to any hearing before the commission shall take an oath of secrecy concerning all proceedings before the commission, violation of which shall be punishable as contempt.

HISTORY: Laws, 1979, ch. 511, § 10, eff from and after January 1, 1980.

RESEARCH REFERENCES

ALR.

Confidentiality of proceedings or reports of judicial inquiry board or commission. 5 A.L.R.4th 730.

§ 9-19-21. Subpoena of witnesses; inspection of documents and records; information for use in impeachment or recall election; retention of records of complaints outside commission's jurisdiction.

(1) The commission shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge as witness, and to provide for the inspection of documents, books, accounts and other records.

(2) If the commission, after investigation of a complaint, determines that there is sufficient evidence to warrant a hearing to determine whether or not there has been a violation under Section 177A, Mississippi Constitution of 1890, the commission may employ counsel to prepare and present the complaint to the commission, a committee of the commission, its master or its factfinder, and to represent the commission before the supreme court.

(3) The commission shall make transcripts of all hearings that are conducted under subsection (2) of this section. Such transcripts shall serve as a record in proceedings before the supreme court.

(4) On request of the speaker of the house of representatives, the president of the senate or the governor, the commission shall make available

information for use in consideration of impeachment or recall election, respectively.

(5) No records pertaining to complaints determined by the commission to be outside its jurisdiction shall be retained over twelve (12) months after such determination by the commission.

HISTORY: Laws, 1979, ch. 511, § 13; Laws, 1980, ch. 385, § 2, eff from and after passage (approved April 25, 1980).

Cross References — Violations of prohibition against use of court personnel in judicial campaigns to be referred to Commission on Judicial Performance, see § 23-15-874.

JUDICIAL DECISIONS

1. In general.

Justice court judge obstructed justice where, after being served with formal complaint by Commission on Judicial Performance, he circulated order to Constables and members of staff demanding that they deliver to him official and unofficial notes and evidence relating to cases and allegations against him and that failure to abide by his orders would constitute grounds for contempt, even though judge never executed order as it was an attempt to knowingly and intentionally intimidate staff in performance of their duties and as potential witnesses against judge. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180, 1996 Miss. LEXIS 425 (Miss. 1996).

§ 9-19-23. Rules and regulations.

The commission on judicial performance shall make rules implementing this chapter, including rules of practice and procedure concerning receiving, processing and handling of complaints or inquiries and for hearings of the commission, a committee of the commission, its master or its factfinder, and the supreme court, to be approved by the supreme court.

HISTORY: Laws, 1979, ch. 511, § 11; Laws, 1980, ch. 385, § 3, eff from and after passage (approved April 25, 1980).

JUDICIAL DECISIONS

1. In general.

Recommendation of Commission on Judicial Performance, pursuant to Commission's rules, was accepted by the Supreme Court and removal ordered for a justice court judge who had knowingly accepted money from fine violations, falsely entered a judgment "dismissed" on court dockets and records, and retained fine money for his own use. In re Stewart, 490 So. 2d 882, 1986 Miss. LEXIS 2496 (Miss. 1986).

§ 9-19-25. Receipt and expenditure of funds.

The commission is authorized and empowered to receive and expend funds appropriated or granted for the purposes of this chapter.

HISTORY: Laws, 1979, ch. 511, § 12; Laws, 1980, ch. 385, § 4, eff from and after passage (approved April 25, 1980).

§ 9-19-27. Annual report.

The commission shall publish an annual statistical report which shall contain the number of complaints filed and the number of dispositions by type, specifying the number of complaints and dispositions for the Supreme Court, Court of Appeals, circuit courts, chancery courts, county courts, justice courts, municipal courts and all other courts in existence in Mississippi. The annual report shall also contain all other data the commission deems appropriate; however, no judicial district, county, region or individual judge shall be referred to in the foregoing report. All references shall be only to general court types and shall comply with the applicable confidentiality requirements.

HISTORY: Laws, 1979, ch. 511, § 14; Laws, 1993, ch. 518, § 24, eff July 13, 1993 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Editor's Notes — Laws, 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws, 1993, ch. 518.

§ 9-19-29. Privileged character of complaints; immunity from civil suit.

All complaints filed pursuant to the provisions of this chapter shall be absolutely privileged. The Commission on Judicial Performance, its members, executive director, commission counsel, master or fact finder, their assistants, staff and employees, and the members of any committee created under the authority of the Mississippi Code of Judicial Conduct shall be immune from civil suit for any conduct arising out of the performance of their official duties.

HISTORY: Laws, 1981, ch. 483, § 2, eff from and after passage (approved April 15, 1981); Laws, 2018, ch. 429, § 1, eff from and after passage (approved April 11, 2018).

Amendment Notes — The 2018 amendment, effective April 11, 2018, inserted "and the members of any committee created under the authority of the Mississippi Code of Judicial Conduct" and made a related change.

JUDICIAL DECISIONS

1. Jurisdiction.

Following dismissal of federal claims, the exercise of supplemental jurisdiction was not warranted over state law claims against the estate of a United States Attorney who disclosed tax returns to a state ethics commission; the claims raised novel and complex issues of Mississippi immunity law under this section, which had never been applied in any reported decision by Mississippi state courts. Diaz v. Estate of Lampton, 2013 U.S. Dist. LEXIS 89770 (S.D. Miss. June 26, 2013).

§ 9-19-31. Judicial Performance Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

There is created in the State Treasury a special interest-bearing fund to be known as the Judicial Performance Fund. The purpose of the fund shall be to provide supplemental funding to the Commission on Judicial Performance. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Commission on Judicial Performance. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purpose of funding the Commission on Judicial Performance; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

HISTORY: Laws, 2004, ch. 543, § 3, eff from and after July 1, 2004.

CHAPTER 21.

ADMINISTRATIVE OFFICE OF COURTS

Creation and Duties of Administrative Office of Courts. 9-21-1
Studies of Administrative Office of Courts. 9-21-51
Administrative Office of the Courts to Establish Program for Use of Interpreters in All Courts. 9-21-71
Guardian Ad Litem Transparency and Oversight Panel. 9-21-101

CREATION AND DUTIES OF ADMINISTRATIVE OFFICE OF COURTS

Sec.
9-21-1. Administrative Office of Courts established; purpose; "court" defined.
9-21-3. Duties of Administrative Office of Courts.
9-21-5. Administrative Director.
9-21-7. Director authorized to hire assistants and employees.
9-21-9. Duties and authority of Director.
9-21-11. Director authorized to apply for, receive, and distribute, funds and grants.
9-21-13. Director to coordinate functions and duties of administrative personnel; expenditure of state monies.
9-21-14. Comprehensive Electronic Court Systems Fund created; purpose; distribution of monies from fund; continuing fund; pilot program.
9-21-15. Director authorized to employ consultants and consultant firms.
9-21-17. Director, and Supreme Court, authorized to use services of any member of court and court-supportive personnel.
9-21-19. Judges, clerks and other employees of court to comply with Director's requests for information.
9-21-21 through 9-21-41. Repealed.
9-21-43. Mississippi Civil Legal Assistance Fund created; organizations eligible to receive funds.
9-21-45. Judicial System Operation Fund created; source of money; use of funds.

§ 9-21-1. Administrative Office of Courts established; purpose; "court" defined.

The Administrative Office of Courts is hereby created. The purpose of the Administrative Office of Courts shall be to assist in the efficient administration of the nonjudicial business of the courts of the state and in improving the administration of justice in Mississippi by performing the duties and exercising the powers as provided in this chapter.

As used in this chapter, unless the context clearly indicates otherwise, the term "court" means any tribunal recognized as a part of the judicial branch of government, but not including county boards of supervisors.

HISTORY: Laws, 1993, ch. 610, § 1, eff from and after passage (approved April 15, 1993).

Cross References — Administrative Office of Courts to certify and monitor drug courts, see § 9-23-7.

JUDICIAL DECISIONS

1. Relation to other laws.

Although the Mississippi Administrative Office of the Courts (AOC) receives federal funding for certain programs, its purpose under Miss. Code Ann. § 9-21-1 is to assist in administration of the nonjudicial business of the state courts. Therefore, bribes which were allegedly paid by an attorney to two circuit judges to influence the outcome of cases filed in their courts were not connected with the transactions or business of the AOC, and thus their convictions of federal program bribery under 18 U.S.C.S. § 666 were erroneous. United States v. Whitfield, 590 F.3d 325, 2009 U.S. App. LEXIS 27003 (5th Cir. Miss. 2009), cert. denied, 562 U.S. 833, 131 S. Ct. 136, 178 L. Ed. 2d 83, 2010 U.S. LEXIS 6417 (U.S. 2010), cert. denied, 562 U.S. 833, 131 S. Ct. 134, 178 L. Ed. 2d 81, 2010 U.S. LEXIS 6353 (U.S. 2010), cert. denied, 562 U.S. 833, 131 S. Ct. 124, 178 L. Ed. 2d 33, 2010 U.S. LEXIS 6208 (U.S. 2010).

OPINIONS OF THE ATTORNEY GENERAL

Based on Sections 9-21-1, 9-17-3 and 9-21-19, all statistical reports of a court should be prepared and maintained by the court administrator. However, any request for statistical data made by the AOC should be complied with by the receiver of such request. If the court administrator maintains all statistical data, then such a request should be made to the court administrator. Martin, May 31, 1996, A.G. Op. #96-0324.

§ 9-21-3. Duties of Administrative Office of Courts.

(1) The Administrative Office of Courts shall be specifically charged with the duty of assisting the Chief Justice of the Supreme Court of Mississippi with his duties as the chief administrative officer of all courts of this state, including without limitation the task of insuring that the business of the courts of the state is attended with proper dispatch, that the dockets of such courts are not permitted to become congested and that trials and appeals of cases, civil and criminal, are not delayed unreasonably.

(2) The office shall also perform the following duties:

(a) To work with the clerks of all youth courts and civil and criminal trial courts in the state to collect, obtain, compile, digest and publish information and statistics concerning the administration of justice in the state.

(b) To serve as an agency to apply for and receive any grants or other assistance and to coordinate and conduct studies and projects to improve the administration of justice by the courts of the state, and it may conduct such studies with or without the assistance of consultants.

(c) To supply such support to the Judicial Advisory Study Committee necessary to accomplish the purposes of this chapter, including without limitation, research and clerical assistance.

(d) To promulgate standards, rules and regulations for computer and/or electronic filing and storage of all court records and court-related records maintained throughout the state in courts and in offices of circuit and chancery clerks.

(e) It shall perform such other duties relating to the improvement of the administration of justice as may be assigned by the Supreme Court of Mississippi.

HISTORY: Laws, 1993, ch. 610, § 2; Laws, 1995, ch. 547, § 1; Laws, 1997, ch. 507, § 5, eff from and after passage (approved April 8, 1997).

Cross References — Supreme Court, see §§ 9-3-1 et seq.

§ 9-21-5. Administrative Director.

The Administrative Director shall be appointed by and shall serve at the pleasure of the Supreme Court of Mississippi as the Director of the Administrative Office of Courts. The Administrative Director shall devote full time to the duties of the office to the exclusion of engagement in any other business or profession for profit.

HISTORY: Laws, 1993, ch. 610, § 3; Laws, 1996, ch. 492, § 2, eff from and after passage (approved April 11, 1996).

§ 9-21-7. Director authorized to hire assistants and employees.

The Administrative Director, with the approval of the Supreme Court, is authorized to employ and set the compensation of such assistants and other employees as are necessary to enable him to perform his duties, subject to approval of the State Personnel Board.

HISTORY: Laws, 1993, ch. 610, § 4, eff from and after passage (approved April 15, 1993).

§ 9-21-9. Duties and authority of Director.

The Administrative Director of Courts shall have the following duties and authority with respect to all courts in addition to any other duties and responsibilities as may be properly assigned by the Supreme Court:

(a) To require the filing of reports, the collection and compilation of statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the courts;

(b) To determine the state of the dockets and evaluate the practices and procedures of the courts and make recommendations concerning the number of judges and other personnel required for the efficient administration of justice;

(c) To prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of courts;

(d) To devise, promulgate and require the use of a uniform youth court case tracking system, including a youth court case filing form for filing with each individual youth court matter, to be utilized by the Administrative Office of Courts and the youth courts in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice systems; in support of the uniform case docketing system, the director shall require that all youth courts utilize the Mississippi Youth Court Information Delivery System (MYCIDS);

(e) To develop, promulgate and require the use of a statewide docket numbering system to be utilized by the youth courts, which youth court docket numbers shall standardize and unify the numbering system by which youth court docket numbers are assigned, such that each docket number would, among other things, identify the county and year in which a particular youth court action was commenced;

(f) To develop, promulgate and require the use of uniform youth court orders and forms in all youth courts and youth court proceedings;

(g) To prepare and submit budget recommendations for state appropriations necessary for the maintenance and operation of the judicial system and to authorize expenditures from funds appropriated for these purposes as permitted or authorized by law;

(h) To develop and implement personnel policies for nonjudicial personnel employed by the courts;

(i) To investigate, make recommendations concerning and assist in the securing of adequate physical accommodations for the judicial system;

(j) To procure, distribute, exchange, transfer and assign such equipment, books, forms and supplies as are acquired with state funds or grant funds or otherwise for the judicial system;

(k) To make recommendations for the improvement of the operations of the judicial system;

(*l*) To prepare and submit an annual report on the work of the judicial system to the Supreme Court;

(m) To take necessary steps in the collection of unpaid court costs, fines and forfeitures;

(n) To perform such additional administrative duties relating to the improvement of the administration of justice as may be assigned by the Supreme Court; and

(o) To promulgate standards, rules and regulations for computer and/or electronic filing and storage of all court records and court-related records maintained throughout the state in courts and in offices of circuit and chancery clerks.

HISTORY: Laws, 1993, ch. 610, § 5; Laws, 1995, ch. 547, § 2; Laws, 1997, ch. 440, § 1; Laws, 1997, ch. 507, § 6; Laws, 2015, ch. 418, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 440, Laws, 1997, effective July 1, 1997, amended this section. Section 6 of ch. 507, Laws, 1997, effective from and after passage (approved April 8, 1997) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the May 8, 1997 meeting of the Committee.

Cross References — Organization, administration, and operation of Youth Court, see §§ 43-21-101 et seq.

OPINIONS OF THE ATTORNEY GENERAL

County approval is required before a position is submitted for approval by the Administrative Office of Courts at a salary which would increase the county's supplemental payment obligations. Williams, Apr. 2, 2004, A.G. Op. 04-0106.

§ 9-21-11. Director authorized to apply for, receive, and distribute, funds and grants.

(1) The Administrative Director of Courts is authorized and empowered to: study and apply for any and all applications for funds and grants directed to the office from any federal governmental agency or entity; disburse such aid, assistance, funds, monies, grants or subgrants; and coordinate the same with the overall administration of justice in Mississippi to assist or aid in the administration of justice, criminal or civil, or the improvement of courts and the judicial system.

(2) The courts of the state, regardless of the name they bear, shall be proper local units or entities of government to apply for and receive such assistance, aid, funds, monies, grants and subgrants.

(3) Grants to youth courts shall be made in accordance with Section 43-21-801.

HISTORY: Laws, 1993, ch. 610, § 6; Laws, 2015, ch. 418, § 2, eff from and after July 1, 2015.

§ 9-21-13. Director to coordinate functions and duties of administrative personnel; expenditure of state monies.

(1) The Administrative Director of Courts shall coordinate the functions and duties of administrative personnel, including court administrators and court administrative aides to judges, to facilitate cooperation and so that the overall administration of justice may be accomplished with efficiency in all courts of the state.

(2) The Administrative Director of Courts is authorized to direct the expenditure of state monies appropriated to the Administrative Office of Courts or any courts of the state for any and all functions or projects directly or indirectly affecting the operation of any court and may transfer monies appropriated for the office or any account to any one or more other accounts or office.

HISTORY: Laws, 1993, ch. 610, § 7, eff from and after passage (approved April 15, 1993).

OPINIONS OF THE ATTORNEY GENERAL

If in any year in which funds are sufficient to pay the salaries of support staff and purchase additional equipment, such remaining funds may be reallocated for the purpose of acquiring equipment for the trial judges themselves, pursuant to Section 9-21-13(2). Smith, June 28, 1996, A.G. Op. #96-0406.

County approval is required before a position is submitted for approval by the Administrative Office of Courts at a salary which would increase the county's supplemental payment obligations. Williams, Apr. 2, 2004, A.G. Op. 04-0106.

§ 9-21-14. Comprehensive Electronic Court Systems Fund created; purpose; distribution of monies from fund; continuing fund; pilot program.

(1) There is created in the State Treasury a special fund to be known as the Comprehensive Electronic Court Systems Fund. The purpose of the fund shall be to provide funding for the development, implementation and maintenance of a comprehensive case management and electronic filing system, one of the purposes of which will be to provide duplicate dockets and case files at remote sites. The system will be designed to:

(a) Provide a framework for the seamless, transparent exchange of data among courts and with appropriate law enforcement, children's services and public welfare agencies.

(b) Allow judges and prosecutors to determine whether there are holds or warrants from other jurisdictions for defendants prior to release on bail or otherwise.

(c) Assist related agencies in tracking the court activity of individuals in all participating jurisdictions.

(d) Assist child protection and human services agencies to determine the status of children and caregivers in the participating jurisdictions.

(e) Duplicate and preserve court documents at remote sites so that they may be protected against catastrophic loss.

(f) Improve the ability of the Administrative Office of Courts and the state courts to handle efficiently monies flowing through the courts and to collect delinquent fees, fines and costs.

(g) Enable the state courts and clerks to generate management reports and analysis tools, allowing them to constantly track individual cases and the overall caseload.

(h) Provide a uniform system for docketing and tracking cases and to automatically generate status reports.

(i) Enable the Administrative Office of Courts to acquire statistical data promptly and efficiently.

(j) Make trial court and individual case dockets available to the public online through use of the Internet.

(2) Monies from the fund shall be distributed by the State Treasurer upon warrants issued by the Administrative Office of Courts.

(3) The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(a) Monies appropriated by the Legislature for the purposes of funding the comprehensive case management and electronic filing system;

(b) The interest accruing to the fund;

(c) Monies received from the federal government;

(d) Donations; and

(e) Monies received from such other sources as may be provided by law.

(4) The Supreme Court may utilize and fund as a pilot program any case management and electronic filing system of the Three Rivers Planning and Development District or that of any county or vendor that complies with the data and case management and electronic filing policy standards adopted by the Supreme Court. No statewide comprehensive case management and electronic system shall be implemented by the Mississippi Supreme Court unless such system is approved by the Legislature.

HISTORY: Laws, 2006, ch. 573, § 1; Laws, 2007, ch. 385, § 1, eff from and after July 1, 2007.

§ 9-21-15. Director authorized to employ consultants and consultant firms.

The Administrative Director of Courts is authorized and empowered to employ consultants and consultant firms and to contract with the same for their services for reasonable compensation and as necessary to improve the administration of justice and the courts of the state. The contracts with such consultants or consultant firms shall be considered as contracts for professional services.

HISTORY: Laws, 1993, ch. 610, § 8, eff from and after passage (approved April 15, 1993).

§ 9-21-17. Director, and Supreme Court, authorized to use services of any member of court and court-supportive personnel.

The Administrative Director of Courts and the Supreme Court are authorized to use the services of any member of the judiciary of any court and any court-supportive personnel, including, without limitation, court reporters, clerks, bailiffs, law clerks, court administrators, secretaries and employees in clerks' offices to carry out studies, projects and functions designed to improve or effect the efficient administration of justice and the operation of courts.

HISTORY: Laws, 1993, ch. 610, § 9, eff from and after passage (approved April 15, 1993).

§ 9-21-19. Judges, clerks and other employees of court to comply with Director's requests for information.

All judges, clerks of court, and other officers or employees of the courts and of offices related to and serving the courts shall comply with all requests made by the Administrative Director for information and statistical data relative to the work of the courts and of such offices and relative to the expenditure of public monies for their maintenance and operation.

HISTORY: Laws, 1993, ch. 610, § 10, eff from and after passage (approved April 15, 1993).

OPINIONS OF THE ATTORNEY GENERAL

Based on Sections 9-21-1, 9-17-3 and 9-21-19, all statistical reports of a court should be prepared and maintained by the court administrator. However, any request for statistical data made by the AOC should be complied with by the receiver of such request. If the court administrator maintains all statistical data, then such a request should be made to the court administrator. Martin, May 31, 1996, A.G. Op. #96-0324.

§ 9-21-21 through 9-21-41. Repealed.

Repealed by Laws, 2018, ch. 396, §§ 1 through 11, eff from and after passage (approved March 19, 2018).

§ 9-21-21. [Laws, 1993, ch. 610, § 11; reenacted and amended, Laws, 1996, ch. 315, § 1; reenacted and amended, Laws, 1998, ch. 503, § 1; reenacted without change, Laws, 2001, ch. 427, § 1, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-23. [Laws, 1993, ch. 610, § 12; reenacted, Laws, 1996, ch. 315, § 2; reenacted without change, Laws, 1998, ch. 503, § 2; reenacted without change, Laws, 2001, ch. 427, § 2, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-25. [Laws, 1993, ch. 610, § 13; reenacted, Laws, 1996, ch. 315, § 3; reenacted without change, Laws, 1998, ch. 503, § 3; reenacted without change, Laws, 2001, ch. 427, § 3, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-27. [Laws, 1993, ch. 610, § 14; reenacted, Laws, 1996, ch. 315, § 4; reenacted without change, Laws, 1998, ch. 503, § 4; reenacted without change, Laws, 2001, ch. 427, § 4, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-29. [Laws, 1993, ch. 610, § 15; reenacted, Laws, 1996, ch. 315, § 5; reenacted without change, Laws, 1998, ch. 503, § 5; reenacted without change, Laws, 2001, ch. 427, § 5, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-31. [Laws, 1993, ch. 610, § 16; reenacted, Laws, 1996, ch. 315, § 6; reenacted without change, Laws, 1998, ch. 503, § 6; reenacted without change, Laws, 2001, ch. 427, § 6, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-33. [Laws, 1993, ch. 610, § 17; reenacted, Laws, 1996, ch. 315, § 7; reenacted without change, Laws, 1998, ch. 503, § 7; reenacted without change, Laws, 2001, ch. 427, § 7, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-35. [Laws, 1993, ch. 610, § 18; reenacted, Laws, 1996, ch. 315, § 8; reenacted without change, Laws, 1998, ch. 503, § 8; reenacted without change, Laws, 2001, ch. 427, § 8, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-37. [Laws, 1993, ch. 610, § 19; reenacted, Laws, 1996, ch. 315, § 9; reenacted without change, Laws, 1998, ch. 503, § 9; reenacted without change, Laws, 2001, ch. 427, § 9, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-39. [Laws, 1993, ch. 610, § 20; reenacted, Laws, 1996, ch. 315, § 10;

reenacted without change, Laws, 1998, ch. 503, § 10; reenacted without change, Laws, 2001, ch. 427, § 10, eff from and after passage (approved Mar. 13, 2001).]

§ 9-21-41. [Laws, 1993, ch. 610, § 21; reenacted, Laws, 1996, ch. 315, § 11; reenacted without change, Laws, 1998, ch. 503, § 11; reenacted without change, Laws, 2001, ch. 427, § 11, eff from and after passage (approved Mar. 13, 2001).]

Editor's Notes — Laws of 2018, ch. 396, § 12, effective March 19, 2018, provides:

"SECTION 12. The Chief Justice of the Supreme Court is authorized to order the continuance of the work of the Criminal Code Consulting Group of the Mississippi Judicial Advisory Study Committee and any other group or subcommittee of the Judicial Advisory Committee as he sees fit."

Former § 9-21-21 created the Mississippi Judicial Advisory Study Committee.

Former § 9-21-23 related to the purpose of the Mississippi Judicial Advisory Study Committee.

Former § 9-21-25 provided for the election of a chairperson to preside over, and the conduct of, the meetings of the Mississippi Judicial Advisory Study Committee.

Former § 9-21-27 related to the frequency and quorum of the Mississippi Judicial Advisory Study Committee meetings.

Former § 9-21-29 required the Administrative Office of the Courts to provide necessary support to the Mississippi Judicial Advisory Study Committee.

Former § 9-21-31 provided additional duties and powers of the Mississippi Judicial Advisory Study Committee and required annual reports.

Former § 9-21-33 required state and local government agencies to assist the Mississippi Judicial Advisory Study Committee upon request of the study committee.

Former § 9-21-35 authorized the Mississippi Judicial Advisory Study Committee to enlist the services of public or private agencies, associations and organizations as needed to carry out the purposes and objections of this chapter.

Former § 9-21-37 authorized the Mississippi Judicial Advisory Study Committee to employ support personnel.

Former § 9-21-39 related authorized members of the Mississippi Judicial Advisory Study Committee to receive a per diem payment and travel expenses.

Former § 9-21-41 authorized the Mississippi Judicial Advisory Study Committee to receive and expend funds appropriated to it by the Legislature.

§ 9-21-43. Mississippi Civil Legal Assistance Fund created; organizations eligible to receive funds.

(1) There is hereby created in the State Treasury a special fund designated as the Civil Legal Assistance Fund. The funds shall be administered by the Supreme Court through the Administrative Office of Courts. The Administrative Office of Courts may also accept monies from any public or private source for deposit into the fund. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned from the investment of monies in the fund shall be deposited to the credit of the funds.

(2) All monies shall be allocated to only those organizations providing legal services to low income Mississippians. Furthermore, no monies from this fund shall be expended to provide legal services in matters currently prohibited by the Legal Services Corporation, Washington, D.C., and no funds shall

be expended on persons who are not financially eligible to receive legal services as directed by the Legal Services Corporation, Washington, D.C.

(3) The monies appropriated shall be distributed to eligible legal services programs based on the percentage of poverty population within the program service area, consistent with the formula used by the Legal Services Corporation.

(4) Monies appropriated to the fund may be used to promote increased participation by the private bar in the delivery of legal services to the indigent through the Mississippi Volunteer Lawyers Project.

(5) Recipients of funds shall have the following duties:

(a) To develop, operate and administer programs within their respective service areas that provide free legal services to indigent clients involved in civil matters;

(b) To report annually to the Supreme Court, through the Administrative Office of Courts, on its activities, including providing a copy of its annual audit that accounts for the use of the funds; and

(c) To refund annually all unused or uncommitted funds.

HISTORY: Laws, 2003, ch. 474, § 1, eff from and after July 1, 2003.

§ 9-21-45. Judicial System Operation Fund created; source of money; use of funds.

(1) There is created in the State Treasury a special fund designated as the Judicial System Operation Fund. The funds shall be administered by the Supreme Court through the Administrative Office of Courts. The fund shall consist of monies deposited therein as provided in Section 99-19-72 and monies from any other source designated for deposit into the fund. The Administrative Office of Courts may also accept monies from any public or private source for deposit into the fund. Money remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned from the investment of monies in the fund shall be deposited to the credit of the fund.

(2) Monies in the fund shall be subject to appropriation by the Legislature and may only be used for the purpose of the operation of the judicial system in the state as determined necessary by the Supreme Court and to provide additional funds for the judicial salaries set forth in Section 25-3-35 and Section 9-9-11(8). Monies in the fund used for the purposes described in this section shall be in addition to other funds available from any other source for such purposes.

HISTORY: Laws, 2010, ch. 561, § 2; Laws, 2012, ch. 329, § 2, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in subsection (2) by substituting "Section 25-3-35" for "Section 25-3-25." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Notes — Laws of 2012, ch. 329, § 11 provides:

"SECTION 11. Sections 1 and 8 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or January 1, 2013, whichever occurs later; and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Section 25-3-25, referred to in (2), should be a reference to Section 25-3-35. The section is set out above as amended by Section 2 of Chapter 329, Laws of 2012.

Cross References — Annual salary supplement for county court judges to be transferred from Judicial System Operation Fund established in this section in monthly installments, see § 9-9-11.

Portion of fees collected by clerk of the supreme court to be deposited in Judicial System Operation Fund established in this section, see § 25-7-3.

Portion of fees collected by clerks of chancery courts to be deposited in Judicial System Operation Fund established in this section, see § 25-7-9.

Portion of fees collected by clerks of the circuit court to be deposited in Judicial System Operation Fund established in this section, see § 25-7-13.

STUDIES OF ADMINISTRATIVE OFFICE OF COURTS

Sec.
9-21-51. Study of storage of court and court-related records; promulgation of rules and regulations for electronic filing and storage of court records.

§ 9-21-51. Study of storage of court and court-related records; promulgation of rules and regulations for electronic filing and storage of court records.

(1) The Supreme Court through the Administrative Office of Courts shall conduct a study to determine the progress of the implementation of Chapter 458, Laws of 1994 and Chapter 521, Laws of 1994. In conducting such study, the Administrative Office of Courts shall examine the various court systems and county offices in the state as defined in Section 9-1-51 to determine the types of computer software and hardware being used by courts and county offices which have elected to store records electronically. The Administrative Office of Courts, after consultation with designees of the Mississippi Association of Supervisors, the Mississippi Circuit Clerks' Association, the Mississippi Association of Chancery Clerks, the Mississippi Municipal Association, The Mississippi Bar, the Department of Archives and History and such other interested entities as the Administrative Office of Courts may identify, shall promulgate standards, rules and regulations for computer and/or electronic filing and storage of all court records and court-related records maintained throughout the state in courts and in county offices. The standards, rules and regulations required by this subsection shall be completed by the Administrative Office of Courts and adopted by the Supreme Court on or before July 1, 1998.

(2) Concurrently with the study mandated in subsection (1) of this section, the Administrative Office of Courts shall consult with designees of the Mississippi Association of Supervisors, the Mississippi Circuit Clerks' Association, the Mississippi Association of Chancery Clerks, the Assessors/Collectors

Association, the Mississippi Municipal Association, the Mississippi State Tax Commission, The Mississippi Bar, the Department of Archives and History and such other interested entities as the Administrative Office of Courts may identify for the purpose of jointly considering and jointly proposing to the Legislature recommendations relating to the electronic filing and storage of all noncourt records maintained throughout the state in county offices as defined in Section 9-1-51. The Administrative Office of Courts shall report to the Legislature not later than January 1, 1998, a summary report of the types of computer software and hardware being used by courts and county offices which have elected to store records electronically, the rules promulgated pursuant to subsection (1) of this section, as well as the recommendations of the group as to the standards, rules and regulations for computer and/or electronic filing and storage of all noncourt records maintained throughout the state in county offices.

(3) All courts and county offices electing to store court records and court-related records electronically shall comply with the standards, rules and regulations promulgated by the Administrative Office of Courts and adopted by the Mississippi Supreme Court. Any courts or county offices which currently store court records and court-related records electronically or which elect to store such records electronically before January 1, 1998, must bring such systems into compliance with the standards, rules and regulations no later than January 1, 1999.

The Administrative Office of Courts shall assist any court or county office currently storing court records or court-related records electronically or electing to store such records before July 1, 1999, in order to assure compliance with the standards, rules and regulations to be promulgated.

HISTORY: Laws, 1997, ch. 507, § 1, eff from and after passage (approved April 8, 1997).

Editor's Notes — The code sections affected by Laws, 1994, ch. 458, referenced in subsection (1), are §§ 9-7-171, 9-7-175 through 9-7-181, 9-7-127, 9-7-137, 11-7-189, 43-21-251, 9-5-201 through 9-5-205, 9-5-213 and 9-5-215.

The code sections affected by Laws, 1994, ch. 521, referenced in subsection (1), are §§ 9-1-51 through 9-1-57, 9-5-135 through 9-5-139, 9-5-157, 9-5-161 through 9-5-167, 9-5-171, 9-5-173, 9-5-201 through 9-5-205, 9-5-213, 9-5-215, 9-7-127, 9-7-131, 9-7-137, 9-7-141, 9-7-171, 9-7-175 through 9-7-181, 11-7-189, 27-1-9, 19-3-41, 19-5-1 through 19-5-7, 19-25-59 through 19-25-63, 35-3-13, 85-7-133, 89-5-25 through 89-5-29 and 89-5-33.

Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.

ADMINISTRATIVE OFFICE OF THE COURTS TO ESTABLISH PROGRAM FOR USE OF INTERPRETERS IN ALL COURTS

Sec.

9-21-71. Definitions.

9-21-73. Program established.

9-21-75. Compensation.

9-21-77. Oath, confidentiality and public comment.

9-21-79. Determination of need for an interpreter.

9-21-81. Interpreter's fees and expenses.

§ 9-21-71. Definitions.

The following words and phrases shall have the meanings ascribed to them unless the context clearly requires otherwise:

(a) "Non-English speaker" means any party or witness who cannot readily understand or communicate in spoken English and who consequently cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. The fact that a person for whom English is a second language knows some English does not prohibit that individual from being allowed to have an interpreter.

(b) "Interpreter" means any person authorized by a court and competent to translate or interpret oral or written communication in a foreign language during court proceedings.

(c) "Court proceedings" means a proceeding before any court of this state or a grand jury hearing.

HISTORY: Laws, 2006, ch. 569, § 1, eff from and after July 1, 2006.

§ 9-21-73. Program established.

(1) The Director of the Administrative Office of Courts shall establish a program to facilitate the use of interpreters in all courts of the State of Mississippi.

(2)(a) The Administrative Office of Courts shall prescribe the qualifications of and certify persons who may serve as certified interpreters in all courts of the State of Mississippi in bilingual proceedings. The Director of the Administrative Office of Courts may set and charge a reasonable fee for certification.

(b) The director shall maintain a current master list of all certified interpreters and shall report annually to the Supreme Court on the frequency of requests for and the use and effectiveness of the interpreters.

(3) In all state court bilingual proceedings, the presiding judicial officer, with the assistance of the director, shall utilize the services of a certified interpreter to communicate verbatim all spoken or written words when the necessity therefor has been determined pursuant to Section 9-21-79.

(4) All state courts shall maintain on file in the office of the clerk of the court a list of all persons who have been certified as interpreters in accordance with the certification program established pursuant to this section.

HISTORY: Laws, 2006, ch. 569, § 2, eff from and after July 1, 2006.

§ 9-21-75. Compensation.

The court may appoint either an interpreter who is paid or a volunteer interpreter.

HISTORY: Laws, 2006, ch. 569, § 3, eff from and after July 1, 2006.

§ 9-21-77. Oath, confidentiality and public comment.

(1) Prior to providing any service to a non-English speaking person, the interpreter shall subscribe to an oath that he or she shall interpret all communications in an accurate manner to the best of his or her skill and knowledge.

(2) The oath shall conform substantially to the following form:

INTERPRETER'S OATH

"Do you solemnly swear or affirm that you will faithfully interpret from (state the language) into English and from English into (state the language) the proceedings before this court in an accurate manner to the best of your skill and knowledge?"

(3) Interpreters shall not voluntarily disclose any admission or communication that is declared to be confidential or privileged under state law. Out-of-court disclosures made by a non-English speaker communicating through an interpreter shall be treated by the interpreter as confidential or privileged or both unless the court orders the interpreter to disclose such communications or the non-English speaker waives such confidentiality or privilege.

(4) Interpreters shall not publicly discuss, report or offer an opinion concerning a matter in which they are engaged, even when that information is not privileged or required by law to be confidential.

(5) The presence of an interpreter shall not affect the privileged nature of any discussion.

HISTORY: Laws, 2006, ch. 569, § 4, eff from and after July 1, 2006.

§ 9-21-79. Determination of need for an interpreter.

(1) An interpreter is needed and a court interpreter shall be appointed when the judge determines, after an examination of a party or witness, that: (a) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (b) the witness cannot speak English so as to be understood directly by counsel, court and jury.

(2) The court should examine a party or witness on the record to determine whether an interpreter is needed if:

(a) A party or counsel requests such an examination;

(b) It appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings; or

(c) If the party or witness requests an interpreter.

The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter.

(3) After the examination, the court should state its conclusion on the record, and the file in the case shall be clearly marked and data entered electronically when appropriate by court personnel to ensure that an interpreter will be present when needed in any subsequent proceeding.

(4) Upon a request by the non-English speaking person, by counsel, or by any other officer of the court, the court shall determine whether the interpreter provided is able to communicate accurately with and translate information to and from the non-English speaking person. If it is determined that the interpreter cannot perform these functions, the court shall provide the non-English speaking person with another interpreter.

HISTORY: Laws, 2006, ch. 569, § 5, eff from and after July 1, 2006.

§ 9-21-81. Interpreter's fees and expenses.

(1) Any volunteer interpreter providing services under Sections 9-21-71 through 9-21-81 shall be paid reasonable expenses by the court.

(2) The expenses of providing an interpreter in any court proceeding may be assessed by the court as costs in the proceeding, or in the case of an indigent criminal defendant to be paid by the county.

HISTORY: Laws, 2006, ch. 569, § 6, eff from and after July 1, 2006.

GUARDIAN AD LITEM TRANSPARENCY AND OVERSIGHT PANEL

Sec.
9-21-101. Guardian Ad Litem Transparency and Oversight Panel created; composition; duties [Repealed effective December 31, 2020].

§ 9-21-101. Guardian Ad Litem Transparency and Oversight Panel created; composition; duties [Repealed effective December 31, 2020].

(1) The Guardian Ad Litem Transparency and Oversight Panel is created to address and investigate the appointment of guardians ad litem as required by statute or ordered by a court, determine the frequency of such appointments, and compile an analysis of the costs to the various counties and to parties. The Chairman of the Senate Judiciary Committee, Subdivision A, shall chair the panel. The other members shall be the following fourteen (14) persons:

(a) The Chair of the Conference of Chancery Court Judges, or a designee;

(b) The Chair of the Conference of County Court Judges, or a designee;

(c) The Chair of the Council of Youth Court Judges, or a designee;

(d) A youth court referee appointed by the Chair of the Council of Youth Court Judges;

(e) The Chair of the Senate Judiciary Committee, Division B, or a designee;

(f) The Senate Chair of the Investigate State Offices Joint Committee;

(g) The Chair of the House of Representatives Judiciary "A" Committee, or a designee;

(h) The Chair of the House of Representatives Judiciary "B" Committee, or a designee;

(i) The Chair of the House of Representatives Youth and Family Affairs Committee, or a designee;

(j) The Director of the Administrative Office of Courts, or a designee;

(k) The Director of the Mississippi Judicial College, or a designee;

(*l*) Two (2) attorneys who are regularly appointed as guardians ad litem, appointed by the Chief Justice of the Supreme Court; and

(m) A youth court prosecutor appointed by the Chief Justice of the Supreme Court.

(2) All appointed members of the panel shall be appointed within thirty (30) days of April 1, 2017. Members of the panel shall serve without compensation.

(3) A vacancy in the panel shall not affect its powers, but shall be filled as prescribed in subsection (1) of this section. The task force shall hold its first meeting within sixty (60) days of April 1, 2017, on the call of the chairperson of the task force. A majority of the membership of the panel shall constitute a quorum, and the panel shall meet at the call of the chairperson, or upon an affirmative vote of a majority of the panel. All members must be notified in writing of all meetings at least five (5) days before the date on which a meeting of the panel is scheduled.

(4) The duties of the panel shall be to:

(a)(i) Compile and analyze the information required to be submitted in Section 9-5-91, and ultimately to recommend legislation to improve the guardian ad litem system.

(ii) Assess the feasibility and potential benefit or detriment of counties employing a full-time guardian ad litem and make a finding and recommendation.

(b) Report its findings and recommendations to the Legislature by December 1 of each year of its existence.

(5) The Performance Evaluation and Expenditure Review Joint Committee of the Legislature shall assist the panel in carrying out its duties required by this section. The Director of the Joint Committee on Performance Evaluation and Expenditure Review shall designate an appropriate employee to act as a point of contact for staff support to the panel. In addition, the panel may

consult with employees of any state agency or department necessary to accomplish the panel's responsibilities under this section.

(6) This section shall stand repealed on December 31, 2020.

HISTORY: Laws, 2017, ch. 418, § 1, eff from and after Apr. 1, 2017.

CHAPTER 23.

INTERVENTION COURTS

Sec.
9-23-1. Short title.
9-23-3. Legislative intent.
9-23-5. Definitions.
9-23-7. Administrative Office of Courts to certify and monitor intervention courts.
9-23-9. State Intervention Courts Advisory Committee created; recommendations; rules and regulations.
9-23-11. Uniform certification process for intervention and certain other courts; minimum standards for intervention court operation; collection and reporting of certain data.
9-23-13. Intervention services; certification of inpatient treatment programs.
9-23-15. Requirements for participation in intervention courts.
9-23-17. Authority of Administrative Office of Courts.
9-23-19. Funding for intervention courts.
9-23-21. Immunity for drug intervention staff.
9-23-23. Successful completion of intervention court requirements may result in expunction of criminal record.
Drug Court Fund. 9-23-51

§ 9-23-1. Short title.

This chapter shall be known and may be cited as the “Alyce Griffin Clarke Intervention Court Act.”

HISTORY: Laws, 2003, ch. 515, § 1, eff from and after July 1, 2003; Laws, 2019, ch. 466, § 2, eff from and after July 1, 2019.

Editor’s Note — Laws of 2019, ch. 466, § 1 provides:

“SECTION 1. This act shall be known and may be cited as the ‘Criminal Justice Reform Act.’”

Amendment Notes — The 2019 amendment substituted “Intervention” for “Drug.”

Cross References — Courts, generally, see §§ 9-1-1 et seq.

Administrative Office of Courts, see §§ 9-21-1 et seq.

Uniform Controlled Substances Law, see §§ 41-29-101 et seq.

General narcotic drug regulations, see §§ 41-29-301 et seq.

Alcoholism and alcohol abuse prevention control and treatment, see §§ 41-30-1 et seq.

Commitment of alcoholics and drug addicts for treatment see §§ 41-31-1 et seq. and 41-32-1 et seq.

Youth Court, generally, see §§ 43-21-101 et seq.

OPINIONS OF THE ATTORNEY GENERAL

The drug court judge could establish rules as to who is responsible and required to collect drug court revenues. Woods, Feb. 24, 2006, A.G. Op. 06-0055.

§ 9-23-3. Legislative intent.

(1) The Legislature of Mississippi recognizes the critical need for judicial

intervention to reduce the incidence of alcohol and drug use, alcohol and drug addiction, and crimes committed as a result of alcohol and drug use and alcohol and drug addiction. It is the intent of the Legislature to facilitate local intervention court alternative orders adaptable to chancery, circuit, county, youth, municipal and justice courts.

(2) The goals of the intervention courts under this chapter include the following:

(a) To reduce alcoholism and other drug dependencies among adult and juvenile offenders and defendants and among respondents in juvenile petitions for abuse, neglect or both;

(b) To reduce criminal and delinquent recidivism and the incidence of child abuse and neglect;

(c) To reduce the alcohol-related and other drug-related court workload;

(d) To increase personal, familial and societal accountability of adult and juvenile offenders and defendants and respondents in juvenile petitions for abuse, neglect or both;

(e) To promote effective interaction and use of resources among criminal and juvenile justice personnel, child protective services personnel and community agencies; and

(f) To use corrections resources more effectively by redirecting prison-bound offenders whose criminal conduct is driven in part by drug and alcohol dependence to intensive supervision and clinical treatment available in the intervention court.

HISTORY: Laws, 2003, ch. 515, § 2; Laws, 2014, ch. 457, § 1, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 3, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "intervention court" and "intervention courts" for "drug court" and "drug courts" throughout the section.

JUDICIAL DECISIONS

1. Transfer to Drug Court.

Where police found drugs in the vehicle of a minor, he was charged with possession of more than thirty grams of marijuana. The circuit court did not abuse its discretion by denying defendant's untimely motion to transfer the case to drug court; defendant had no right to have his case transferred. Jim v. State, 911 So. 2d 658, 2005 Miss. App. LEXIS 665 (Miss. Ct. App. 2005).

§ 9-23-5. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "Chemical" tests means the analysis of an individual's: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v) saliva, (vi) urine, or (vii) other bodily substance to determine the presence of alcohol or a controlled substance.

(b) "Crime of violence" means an offense listed in Section 97-3-2.

(c) "Intervention court" means a drug court, mental health court, veterans court or problem-solving court that utilizes an immediate and highly structured intervention process for eligible defendants or juveniles that brings together mental health professionals, substance abuse professionals, local social programs and intensive judicial monitoring.

(d) "Evidence-based practices" means supervision policies, procedures and practices that scientific research demonstrates reduce recidivism.

(e) "Risk and needs assessment" means the use of an actuarial assessment tool validated on a Mississippi corrections population to determine a person's risk to reoffend and the characteristics that, if addressed, reduce the risk to reoffend.

HISTORY: Laws, 2003, ch. 515, § 3; Laws, 2014, ch. 457, § 2, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 4, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:
"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment, in (c), combined and rewrote the former introductory paragraph of (c) and (i), which read: "Drug court" means an immediate and highly structured intervention process for substance abuse treatment of eligible defendants or juveniles that: (i) Brings together substance abuse professionals, local social programs and intensive judicial monitoring; and," and deleted former (ii), which read: "Follows the key components of drug courts published by the Drug Court Program Office of the United States Department of Justice."

§ 9-23-7. Administrative Office of Courts to certify and monitor intervention courts.

The Administrative Office of Courts shall be responsible for certification and monitoring of local intervention courts according to standards promulgated by the State Intervention Courts Advisory Committee.

HISTORY: Laws, 2003, ch. 515, § 4, eff from and after July 1, 2003; Laws, 2019, ch. 466, § 5, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:
"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "intervention" and "Intervention" for "drug" and "Drug."

Cross References — Administrative Office of Courts, see §§ 9-21-1 et seq.

§ 9-23-9. State Intervention Courts Advisory Committee created; recommendations; rules and regulations.

(1) The State Intervention Courts Advisory Committee is established to develop and periodically update proposed statewide evaluation plans and models for monitoring all critical aspects of intervention courts. The committee must provide the proposed evaluation plans to the Chief Justice and the

Administrative Office of Courts. The committee shall be chaired by the Director of the Administrative Office of Courts or a designee of the director and shall consist of eleven (11) members all of whom shall be appointed by the Supreme Court. The members shall be broadly representative of the courts, mental health, veterans affairs, law enforcement, corrections, criminal defense bar, prosecutors association, juvenile justice, child protective services and substance abuse treatment communities.

(2) The State Intervention Courts Advisory Committee may also make recommendations to the Chief Justice, the Director of the Administrative Office of Courts and state officials concerning improvements to intervention court policies and procedures including the intervention court certification process. The committee may make suggestions as to the criteria for eligibility, and other procedural and substantive guidelines for intervention court operation.

(3) The State Intervention Courts Advisory Committee shall act as arbiter of disputes arising out of the operation of intervention courts established under this chapter and make recommendations to improve the intervention courts; it shall also make recommendations to the Supreme Court necessary and incident to compliance with established rules.

(4) The State Intervention Courts Advisory Committee shall establish through rules and regulations a viable and fiscally responsible plan to expand the number of adult and juvenile intervention court programs operating in Mississippi. These rules and regulations shall include plans to increase participation in existing and future programs while maintaining their voluntary nature.

(5) The State Intervention Courts Advisory Committee shall receive and review the monthly reports submitted to the Administrative Office of Courts by each certified intervention court and provide comments and make recommendations, as necessary, to the Chief Justice and the Director of the Administrative Office of Courts.

HISTORY: Laws, 2003, ch. 515, § 5; Laws, 2008, ch. 390, § 1; Laws, 2014, ch. 457, § 3, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 6, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "Intervention" for "Drug" and "intervention" for "drug" throughout the section; and in (1), rewrote the former last sentence, which read: "The committee shall be chaired by the Director of the Administrative Office of Courts and shall consist of not less than seven (7) members nor more than eleven (11) members appointed by the Supreme Court and broadly representative of the courts, law enforcement, corrections, juvenile justice, child protective services and substance abuse treatment communities" and divided it into the present next-to-last and last sentences.

Cross References — State Drug Court Advisory Committee responsible for developing statewide rules and policies as they relate to Veterans Treatment Court programs, see § 9-25-1.

§ 9-23-11. Uniform certification process for intervention and certain other courts; minimum standards for intervention court operation; collection and reporting of certain data.

(1) The Administrative Office of Courts shall establish, implement and operate a uniform certification process for all intervention courts and other problem-solving courts including juvenile courts, veterans courts or any other court designed to adjudicate criminal actions involving an identified classification of criminal defendant to ensure funding for intervention courts supports effective and proven practices that reduce recidivism and substance dependency among their participants.

(2) The Administrative Office of Courts shall establish a certification process that ensures any new or existing intervention court meets minimum standards for intervention court operation.

(a) These standards shall include, but are not limited to:

(i) The use of evidence-based practices including, but not limited to, the use of a valid and reliable risk and needs assessment tool to identify participants and deliver appropriate interventions;

(ii) Targeting medium to high-risk offenders for participation;

(iii) The use of current, evidence-based interventions proven to reduce dependency on drugs or alcohol, or both;

(iv) Frequent testing for alcohol or drugs;

(v) Coordinated strategy between all intervention court program personnel involving the use of graduated clinical interventions;

(vi) Ongoing judicial interaction with each participant; and

(vii) Monitoring and evaluation of intervention court program implementation and outcomes through data collection and reporting.

(b) Intervention court certification applications shall include:

(i) A description of the need for the intervention court;

(ii) The targeted population for the intervention court;

(iii) The eligibility criteria for intervention court participants;

(iv) A description of the process for identifying appropriate participants including the use of a risk and needs assessment and a clinical assessment;

(v) A description of the intervention court intervention components, including anticipated budget and implementation plan;

(vi) The data collection plan which shall include collecting the following data:

1. Total number of participants;

2. Total number of successful participants;

3. Total number of unsuccessful participants and the reason why each participant did not complete the program;

4. Total number of participants who were arrested for a new criminal offense while in the intervention court program;

5. Total number of participants who were convicted of a new felony or misdemeanor offense while in the intervention court program;

6. Total number of participants who committed at least one (1) violation while in the intervention court program and the resulting sanction(s);

7. Results of the initial risk and needs assessment or other clinical assessment conducted on each participant; and

8. Total number of applications for screening by race, gender, offenses charged, indigence and, if not accepted, the reason for nonacceptance; and

9. Any other data or information as required by the Administrative Office of Courts.

(c) Every intervention court shall be certified under the following schedule:

(i) An intervention court application submitted after July 1, 2014, shall require certification of the intervention court based on the proposed drug court plan.

(ii) An intervention court initially established and certified after July 1, 2014, shall be recertified after its second year of funded operation on a time frame consistent with the other certified courts of its type.

(iii) A certified adult felony intervention court in existence on December 31, 2018, must submit a recertification petition by July 1, 2019, and be recertified under the requirements of this section on or before December 31, 2019; after the recertification, all certified adult felony intervention courts must submit a recertification petition every two (2) years to the Administrative Office of Courts. The recertification process must be completed by December 31st of every odd calendar year.

(iv) A certified youth, family, misdemeanor or chancery intervention court in existence on December 31, 2018, must submit a recertification petition by July 31, 2020, and be recertified under the requirements of this section by December 31, 2020. After the recertification, all certified youth, family, misdemeanor and chancery intervention courts must submit a recertification petition every two (2) years to the Administrative Office of Courts. The recertification process must be completed by December 31st of every even calendar year.

(3) All certified intervention courts shall measure successful completion of the drug court based on those participants who complete the program without a new criminal conviction.

(4)(a) All certified drug courts must collect and submit to the Administrative Office of Courts each month, the following data:

(i) Total number of participants at the beginning of the month;

(ii) Total number of participants at the end of the month;

(iii) Total number of participants who began the program in the month;

(iv) Total number of participants who successfully completed the intervention court in the month;

(v) Total number of participants who left the program in the month;

(vi) Total number of participants who were arrested for a new criminal offense while in the intervention court program in the month;

(vii) Total number of participants who were convicted for a new criminal arrest while in the intervention court program in the month; and

(viii) Total number of participants who committed at least one (1) violation while in the intervention court program and any resulting sanction(s).

(b) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall report to the PEER Committee the information in subsection (4)(a) of this section in a sortable, electronic format.

(5) All certified intervention courts may individually establish rules and may make special orders and rules as necessary that do not conflict with the rules promulgated by the Supreme Court or the Administrative Office of Courts.

(6) A certified intervention court may appoint the full- or part-time employees it deems necessary for the work of the intervention court and shall fix the compensation of those employees. Such employees shall serve at the will and pleasure of the judge or the judge's designee.

(7) The Administrative Office of Courts shall promulgate rules and regulations to carry out the certification and re-certification process and make any other policies not inconsistent with this section to carry out this process.

(8) A certified intervention court established under this chapter is subject to the regulatory powers of the Administrative Office of Courts as set forth in Section 9-23-17.

HISTORY: Laws, 2003, ch. 515, § 6; Laws, 2014, ch. 457, § 4, eff from and after July 1, 2014; Laws, 2019, ch. 410, § 1, eff from and after passage (approved March 28, 2019); Laws, 2019, ch. 466, § 7, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (5). The word "this article" was changed to "this chapter." The Joint Committee ratified the correction at its July 13, 2009, meeting.

Section 1 of Chapter 410, Laws of 2019, effective upon passage (approved March 28, 2019), amended this section. Section 7 of Chapter 466, Laws of 2019, effective July 1, 2019 (approved April 16, 2019), also amended this section. As set out above, this section reflects the language of Section 7 of Chapter 466, Laws of 2019, which contains language that specifically provides that it supersedes § 9-23-11 as amended by Chapter 410, Laws of 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The first 2019 amendment (ch. 410), effective March 28, 2019, in (2)(c), inserted "initially" and "and certified" and added "on a time frame...courts of its type" at the end of (i), rewrote (iii) and (iv), which read: "(iii) A drug court in existence on July 1, 2014, must submit a certification petition within one (1) year of July 1, 2014, and be certified pursuant to the requirements of this section prior to expending drug court resources budgeted for fiscal year 2016; and (iv) All drug courts shall submit a re-certification petition every two (2) years to the Administrative Office of Courts after the initial certification," and made a minor punctuation change.

The second 2019 amendment (ch. 466), effective July 1, 2019, substituted "Intervention" for "Drug" and "intervention" for "drug" throughout the section; rewrote (2)(b)(vi)8, which read: "Any other data or information as required by the Administrative Office of Courts"; and rewrote (2)(c)(ii) through (iv), which read: "(ii) A drug court established after July 1, 2014, shall be recertified after its second year of funded operation; (iii) A drug court in existence on July 1, 2014, must submit a certification petition within one (1) year of July 1, 2014, and be certified pursuant to the requirements of this section prior to expending drug court resources budgeted for fiscal year 2016; and (iv) All drug courts shall submit a re-certification petition every two (2) years to the Administrative Office of Courts after the initial certification."

§ 9-23-13. Intervention services; certification of inpatient treatment programs.

(1) An intervention court's alcohol and drug intervention component shall provide for eligible individuals, either directly or through referrals, a range of necessary court intervention services, including, but not limited to, the following:

(a) Screening using a valid and reliable assessment tool effective for identifying alcohol and drug dependent persons for eligibility and appropriate services;

(b) Clinical assessment; for a DUI offense, if the person has two (2) or more DUI convictions, the court shall order the person to undergo an assessment that uses a standardized evidence-based instrument performed by a physician to determine whether the person has a diagnosis for alcohol and/or drug dependence and would likely benefit from a court-approved medication-assisted treatment indicated and approved for the treatment of alcohol and/or drug dependence by the United States Food and Drug Administration, as specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. Upon considering the results of the assessment, the court may refer the person to a rehabilitative program that offers one or more forms of court-approved medications that are approved for the treatment of alcohol and/or drug dependence by the United States Food and Drug Administration;

(c) Education;

(d) Referral;

(e) Service coordination and case management; and

(f) Counseling and rehabilitative care.

(2) Any inpatient treatment or inpatient detoxification program ordered by the court shall be certified by the Department of Mental Health, other appropriate state agency or the equivalent agency of another state.

(3) All intervention courts shall make available the option for participants to use court-approved medication-assisted treatment while participating in the programs of the court in accordance with the recommendations of the National Drug Court Institute.

HISTORY: Laws, 2003, ch. 515, § 7; Laws, 2014, ch. 457, § 5, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 8, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:
"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "intervention" for "drug" and made a related change in the introductory paragraph of (1); added "for a DUI offense, if the person…by the United States Food and Drug Administration" at the end of (1)(b); and added (3)."

Cross References — Commitment of alcoholics and drug addicts for treatment, see §§ 41-31-1 et seq. and 41-32-1 et seq.

§ 9-23-15. Requirements for participation in intervention courts.

(1) In order to be eligible for alternative sentencing through a local intervention court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence as defined in Section 97-3-2 within the previous ten (10) years.

(b) The crime before the court cannot be a crime of violence as defined in Section 97-3-2.

(c) Other criminal proceedings alleging commission of a crime of violence cannot be pending against the participant.

(d) The participant cannot be charged with burglary of a dwelling under Section 97-17-23(2) or 97-17-37.

(e) The crime before the court cannot be a charge of driving under the influence of alcohol or any other drug or drugs that resulted in the death of a person.

(f) The crime charged cannot be one of trafficking in controlled substances under Section 41-29-139(f), nor can the participant have a prior conviction for same.

(2) Participation in the services of an alcohol and drug intervention component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another intervention court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3)(a) As a condition of participation in an intervention court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the intervention court. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the intervention court or the laboratory; however, if testing is available from other sources or the program itself, the judge may waive any fees for testing. The judge may waive all fees if the applicant is determined to be indigent.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the intervention court.

(4) A person does not have a right to participate in intervention court under this chapter. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in intervention court under this chapter. However, any person

meeting the eligibility criteria in subsection (1) of this section shall, upon request, be screened for admission to intervention court.

HISTORY: Laws, 2003, ch. 515, § 8; Laws, 2011, ch. 366, § 1; Laws, 2014, ch. 457, § 6, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 9, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "intervention" for "drug" throughout the section; deleted "currently" preceding "charged with burglary" in (1)(d); and added the last sentences of (3)(a) and (4).

JUDICIAL DECISIONS

ANALYSIS

1. No right to transfer.
2. Judicial misconduct.

1. No right to transfer.

Circuit court did not err in dismissing an inmate's motion for post-conviction collateral relief because pursuant to Miss. Code Ann. § 9-23-15, the inmate had no right to attend drug court. the inmate had no right to have his case transferred to the drug court. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Post-conviction relief was denied in case where inmate argued his case should have been transferred to drug court under Miss. Code Ann. § 9-23-15; pursuant to that section, an inmate has no right to have his case transferred to the drug court. Phillips v. State, 25 So. 3d 404, 2010 Miss. App. LEXIS 23 (Miss. Ct. App. 2010).

Where police found drugs in the vehicle of a minor, he was charged with possession of more than thirty grams of marijuana. The circuit court did not abuse its discretion by denying his untimely motion to transfer the case to drug court; defendant did not have an equal protection claim since no one has the right to attend the drug court. Jim v. State, 911 So. 2d 658, 2005 Miss. App. LEXIS 665 (Miss. Ct. App. 2005).

2. Judicial misconduct.

Judge violated Miss. Code Ann. § 9-23-15(2) and Miss. Code Jud. Conduct Canons 1, 2(A), and 3(B)(2) by accepting participants from other courts. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857, 2015 Miss. LEXIS 242 (Miss. 2015).

OPINIONS OF THE ATTORNEY GENERAL

A person may be eligible for sentencing through drug court if they have been charged under Section 41-29-313, commonly known as the "precursor" statute. Chamberlin, Oct. 27, 2006, A.G. Op. 06-0547.

A person may be eligible for sentencing through drug court if they have been charged under Section 97-1-1, where the "conspiracy" is to commit a violation of Sections 41-29-139 (b)(1) or 41-29-139(c)(2)(D) or 41-29-313. Chamberlin, Oct. 27, 2006, A.G. Op. 06-0547.

The definition of "occupied dwelling" in subsection (1)(d) of this section requires that a person actually be present in the dwelling at the time of the burglary. Chamberlin, Oct. 27, 2006, A.G. Op. 06-0547.

§ 9-23-17. Authority of Administrative Office of Courts.

With regard to any intervention court, the Administrative Office of Courts shall do the following:

(a) Certify and re-certify intervention court applications that meet standards established by the Administrative Office of Courts in accordance with this chapter.

(b) Ensure that the structure of the intervention component complies with rules adopted under this section and applicable federal regulations.

(c) Revoke the authorization of a program upon a determination that the program does not comply with rules adopted under this section and applicable federal regulations.

(d) Make agreements and contracts to effectuate the purposes of this chapter with:

(i) Another department, authority or agency of the state;

(ii) Another state;

(iii) The federal government;

(iv) A state-supported or private university; or

(v) A public or private agency, foundation, corporation or individual.

(e) Directly, or by contract, approve and certify any intervention component established under this chapter.

(f) Require, as a condition of operation, that each intervention court created or funded under this chapter be certified by the Administrative Office of Courts.

(g) Collect monthly data reports submitted by all certified intervention courts, provide those reports to the State Intervention Courts Advisory Committee, compile an annual report summarizing the data collected and the outcomes achieved by all certified intervention courts and submit the annual report to the Oversight Task Force.

(h) Every three (3) years contract with an external evaluator to conduct an evaluation of the effectiveness of the intervention court program, both statewide and individual intervention court programs, in complying with the key components of the intervention courts adopted by the National Association of Drug Court Professionals.

(i) Adopt rules to implement this chapter.

HISTORY: Laws, 2003, ch. 515, § 9; Laws, 2014, ch. 457, § 7, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 10, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by inserting the word "the" preceding "Administrative Office of Courts" in (a). The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "Intervention" for "Drug" and "intervention" for "drug" throughout the section; and deleted "established under this chapter" preceding "the Administrative Office of Courts" in the introductory paragraph.

Cross References — Oversight Task Force, see § 47-5-6.

§ 9-23-19. Funding for intervention courts.

(1) All monies received from any source by the intervention court shall be accumulated in a fund to be used only for intervention court purposes. Any funds remaining in this fund at the end of a fiscal year shall not lapse into any general fund, but shall be retained in the Intervention Court Fund for the funding of further activities by the intervention court.

(2) An intervention court may apply for and receive the following:

(a) Gifts, bequests and donations from private sources.

(b) Grant and contract money from governmental sources.

(c) Other forms of financial assistance approved by the court to supplement the budget of the intervention court.

(3) The costs of participation in an alcohol and drug intervention program required by the certified intervention court may be paid by the participant or out of user fees or such other state, federal or private funds that may, from time to time, be made available.

(4) The court may assess such reasonable and appropriate fees to be paid to the local Intervention Court Fund for participation in an alcohol or drug intervention program; however, all fees may be waived if the applicant is determined to be indigent.

HISTORY: Laws, 2003, ch. 515, § 10; Laws, 2014, ch. 457, § 8, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 11, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "Intervention" for "Drug" and "intervention" for "drug," and made related changes, throughout the section; and added "however, all fees may be waived if the applicant is determined to be indigent" at the end of (4).

OPINIONS OF THE ATTORNEY GENERAL

Section 9-13-19 permits an agreement between a county and other governmental entities to whom drug testing equipment has been loaned to specify that the fees charged for use of the machine and related costs be paid directly to the county juvenile drug court. Nowak, Dec. 16, 2005, A.G. Op. 05-0598.

§ 9-23-21. Immunity for intervention court staff.

The director and members of the professional and administrative staff of the intervention court who perform duties in good faith under this chapter are immune from civil liability for:

(a) Acts or omissions in providing services under this chapter; and

(b) The reasonable exercise of discretion in determining eligibility to participate in the intervention court.

HISTORY: Laws, 2003, ch. 515, § 11, eff from and after July 1, 2003; Laws, 2019, ch. 466, § 12, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:
"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"
Amendment Notes — The 2019 amendment substituted "intervention" for "drug" twice.

§ 9-23-23. Successful completion of intervention court requirements may result in expunction of criminal record.

If the participant completes all requirements imposed upon him by the intervention court, including the payment of fines and fees assessed and not waived by the court, the charge and prosecution shall be dismissed. If the defendant or participant was sentenced at the time of entry of plea of guilty, the successful completion of the intervention court order and other requirements of probation or suspension of sentence will result in the record of the criminal conviction or adjudication being expunged. However, no expunction of any implied consent violation shall be allowed.

HISTORY: Laws, 2003, ch. 515, § 12, eff from and after July 1, 2003; Laws, 2019, ch. 466, § 13, eff from and after July 1, 2019.

Editor's Note — Laws of 2019, ch. 466, § 1 provides:
"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"
Amendment Notes — The 2019 amendment substituted "intervention" for "drug" twice; and inserted "and not waived by the court" in the first sentence.

DRUG COURT FUND

Sec.
9-23-51. Drug Court Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

§ 9-23-51. Drug Court Fund created; purpose; distribution of monies from fund; fund to be a continuing fund; components of fund.

There is created in the State Treasury a special interest-bearing fund to be known as the Drug Court Fund. The purpose of the fund shall be to provide supplemental funding to all drug courts in the state. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Administrative Office of Courts, pursuant to procedures set by the State Drug Courts Advisory Committee to assist both juvenile drug courts and adult drug courts. Funds from other sources shall be distributed to the drug courts in the state based on a formula set by the State Drug Courts Advisory Committee. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of: (a) monies appropriated by the Legislature for the purposes of funding drug courts; (b) the interest accruing to the fund; (c) monies received under the provisions of Section 99-19-73; (d) monies received from the federal government; and (e) monies received from such other sources as may be provided by law.

HISTORY: Laws, 2004, ch. 543, § 1; Laws, 2005, 2nd Ex Sess, ch. 1, § 5, eff from and after July 1, 2005.

CHAPTER 25.

VETERANS TREATMENT COURTS

Sec.
9-25-1. Veterans Treatment Courts; legislative intent; authorization; eligibility for participation; Administrative Office of Courts to oversee; development of statewide rules and policies by State Intervention Court Advisory Committee; funding; immunity.

§ 9-25-1. Veterans Treatment Courts; legislative intent; authorization; eligibility for participation; Administrative Office of Courts to oversee; development of statewide rules and policies by State Intervention Court Advisory Committee; funding; immunity.

(1) The Legislature recognizes that our military veterans have provided an invaluable service to our country. In doing so, many may have suffered the effects of, including, but not limited to, post-traumatic stress disorder, traumatic brain injury and depression, and may also suffer drug and alcohol dependency or addiction and co-occurring mental illness and substance abuse problems. As a result of this, some veterans come into contact with the criminal justice system and are charged with felony offenses. There is a critical need for the justice system to recognize these veterans, provide accountability for their wrongdoing, provide for the safety of the public, and provide for the treatment of our veterans. It is the intent of the Legislature to create a framework for which specialized veterans treatment courts may be established at the circuit court level and at the discretion of the circuit court judge.

(2) **Authorization.** A circuit court judge may establish a Veterans Treatment Court program. The Veterans Treatment Court may, at the discretion of the circuit court judge, be a separate court program or as a component of an existing intervention court program. At the discretion of the circuit court judge, the Veterans Treatment Court may be operated in one (1) county within the circuit court district, and allow veteran participants from all counties within the circuit court district to participate.

(3) **Eligibility.**

(a) In order to be eligible to participate in a Veterans Treatment Court program established under this section, the attorney representing the state must consent to the defendant's participation in the program. Further, the court in which the criminal case is pending must have found that the defendant is a veteran of the United States Armed Forces as defined in Title 38 USCS.

(b) Participation in the services of an alcohol and drug intervention component shall only be open to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another Veterans Treatment Court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(c)(i) As a condition of participation in a Veterans Treatment Court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the Veterans Treatment Court program. A participant may be held liable for costs associated with all chemical tests required under this section. However, a judge may waive any fees for testing.

(ii) A laboratory that performs chemical tests under this section shall report the results of the tests to the Veterans Treatment Courts.

(d) A person does not have the right to participate in a Veterans Treatment Court program under this chapter. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in the Veterans Treatment Court program.

(e) A defendant shall be excluded from participating in a Veterans Treatment Court program if any one (1) of the following applies:

(i) The crime before the court is a crime of violence as set forth in paragraph (c) of this subsection.

(ii) The defendant does not demonstrate a willingness to participate in a treatment program.

(iii) The defendant has been previously convicted of a felony crime of violence including, but not limited to: murder, rape, sexual battery, statutory rape of a child under the age of sixteen (16), armed robbery, arson, aggravated kidnapping, aggravated assault, stalking, or any offense involving the discharge of a firearm or where serious bodily injury or death resulted to any person.

(f) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the Veterans Treatment Court program or otherwise through the justice system.

(g) Proof of matters under this section may be submitted to the court in which the criminal case is pending in any form the court determines to be appropriate, including military service and medical records, previous determinations of a disability by a veteran's organization or by the United States Department of Veterans Affairs, testimony or affidavits of other veterans or service members, and prior determinations of eligibility for benefits by any state or county veterans office.

(4) **Administrative Office of Courts.** With regard to any Veterans Treatment Court established under this chapter, the Administrative Office of Courts may do the following:

(a) Ensure that the structure of the intervention component complies with rules adopted under this chapter and applicable federal regulations.

(b) Revoke the authorization of a program upon a determination that the program does not comply with rules adopted under this chapter and applicable federal regulations.

(c) Enter into agreements and contracts to effectuate the purposes of this chapter with:

(i) Another department, authority, or agency of the state;

(ii) Another state;

(iii) The federal government;

(iv) A state-supported or private university; or

(v) A public or private agency, foundation, corporation, or individual.

(d) Directly, or by contract, approve and certify any intervention component established under this chapter.

(e) Require, as a condition of operation, that each veterans court created or funded under this chapter be certified by the Administrative Office of Courts.

(f) Adopt rules to implement this chapter.

(5) **State Intervention Court Advisory Committee.**

(a) The State Intervention Court Advisory Committee shall be responsible for developing statewide rules and policies as they relate to Veterans Treatment Court programs.

(b) The State Intervention Court Advisory Committee may also make recommendations to the Chief Justice, the Director of the Administrative Office of Courts and state officials concerning improvements to Veterans Treatment Court policies and procedures.

(c) The State Intervention Court Advisory Committee shall act as an arbiter of disputes arising out of the operation of Veterans Treatment Court programs established under this chapter and make recommendations to improve the Veterans Treatment Court programs.

(6) **Funding for Veterans Treatment Courts.**

(a) All monies received from any source by the Veterans Treatment Court program shall be accumulated in a fund to be used only for Veterans Treatment Court purposes. Any funds remaining in this fund at the end of the fiscal year shall not lapse into the General Fund, but shall be retained in the Veterans Treatment Court fund for the funding of further activities by the Veterans Treatment Court program.

(b) A Veterans Treatment Court program may apply for and receive the following:

(i) Gifts, bequests and donations from private sources.

(ii) Grant and contract money from governmental sources.

(iii) Other forms of financial assistance approved by the court to supplement the budget of the Veterans Treatment Court program.

(7) **Immunity.** The coordinator and members of the professional and administrative staff of the Veterans Treatment Court program who perform duties in good faith under this chapter are immune from civil liability for:

(a) Acts or omissions in providing services under this chapter; and

(b) The reasonable exercise of discretion in determining eligibility to participate in the Veterans Treatment Court program.

(8) This section shall be codified as a separate article in Title 9, Mississippi Code of 1972.

HISTORY: Laws, 2014, ch. 457, § 82, eff from and after July 1, 2014; Laws, 2019, ch. 466, § 14, eff from and after July 1, 2019.

Editor's Notes — Laws of 2019, ch. 466, § 1 provides:
"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "Intervention" for "Drug" and "intervention" for "drug" throughout the section.

CHAPTER 27.

RIVERS MCGRAW MENTAL HEALTH DIVERSION PROGRAM ACT

Sec.

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§ 9-27-1. Short title.

This chapter shall be known and may be cited as the Rivers McGraw Mental Health Diversion Program Act.

HISTORY: Laws, 2017, ch. 416, § 1, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 15, eff from and after July 1, 2019.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment deleted "Pilot" following "Diversion."

§ 9-27-3. Legislative intent.

(1) The Legislature recognizes the critical need for judicial intervention to establish court processes and procedures that are more responsive to the needs of defendants with mental illnesses, while maintaining public safety and the integrity of the court process.

(2) The goals of the mental health courts under this chapter include the following:

(a) Reduce the number of future criminal justice contacts among offenders with mental illnesses;

(b) Reduce the inappropriate institutionalization of people with mental illnesses;

(c) Improve the mental health and well-being of defendants who come in contact with the criminal justice system;

(d) Improve linkages between the criminal justice system and the mental health system;

(e) Expedite case processing;

(f) Protect public safety;

(g) Establish linkages with other state and local agencies and programs that target people with mental illnesses in order to maximize the delivery of services; and

(h) To use corrections resources more effectively by redirecting prison-bound offenders whose criminal conduct is driven in part by mental illnesses to intensive supervision and clinical treatment available in the mental health court.

HISTORY: Laws, 2017, ch. 416, § 2, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 16, eff from and after July 1, 2019.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment deleted the former last sentence of (1), which read: "It is the intent of the Legislature to facilitate pilot programs for local mental health diversion program alternatives in several pilot circuit court districts that will be adaptable to chancery, circuit, county, youth, municipal and justice courts"; and in (2), substituted "mental health courts" for "mental health diversion pilot programs" in the introductory paragraph, and "mental health court" for "mental health diversion pilot program" in (h).

§ 9-27-5. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "Chemical tests" means the analysis of an individual's: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v) saliva, (vi) urine, or (vii) other bodily substance to determine the presence of alcohol or a controlled substance.

(b) "Mental health diversion program" means an immediate and highly structured intervention process for mental health treatment of eligible defendants or juveniles that:

(i) Brings together mental health professionals, local social programs and intensive judicial monitoring; and

(ii) Follows the key components of the mental health court curriculum published by the Bureau of Justice of the United States Department of Justice.

(c) "Evidence-based practices" means supervision policies, procedures and practices that scientific research demonstrates reduce recidivism.

(d) "Risk and needs assessment" means the use of an actuarial assessment tool validated on a Mississippi corrections population to determine a person's risk to reoffend and the characteristics that, if addressed, reduce the risk to reoffend.

HISTORY: Laws, 2017, ch. 416, § 3, eff from and after passage (approved Apr. 11, 2017).

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides: "SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

§ 9-27-7. Administrative Office of Courts to be repository of court reports; mental health court standards; collection and reporting of certain data.

(1) The Administrative Office of Courts is the repository for reports filed by courts established under this chapter. The goal of the mental health courts is to support effective and proven practices that reduce recidivism and provide treatment for participants.

(2) Mental health courts must adhere to the standards established in this chapter.

(a) These standards shall include, but are not limited to:

(i) The use of evidence-based practices including, but not limited to, the use of a valid and reliable risk and needs assessment tool to identify participants and deliver appropriate treatments;

(ii) Targeting medium- to high-risk offenders for participation;

(iii) The use of current, evidence-based interventions proven to provide mental health treatment;

(iv) Coordinated strategy between all mental health court personnel;

(v) Ongoing judicial interaction with each participant; and

(vi) Monitoring and evaluation of mental health court implementation and outcomes through data collection and reporting.

(b) Mental health courts must implement a data collection plan, which shall include collecting the following data:

(i) Total number of participants;

(ii) Total number of successful participants;

(iii) Total number of unsuccessful participants and the reason why each participant did not complete the program;

(iv) Total number of participants who were arrested for a new criminal offense while in the mental health court;

(v) Total number of participants who were convicted of a new felony or misdemeanor offense while in the mental health court;

(vi) Total number of participants who committed at least one (1) violation while in the mental health court and the resulting sanction(s);

(vii) Results of the initial risk and needs assessment or other clinical assessment conducted on each participant; and

(viii) Any other data or information as required by the Administrative Office of Courts.

(3) All mental health courts must measure successful completion of the program based on those participants who complete the program without a new criminal conviction.

(4)(a) Mental health courts must collect and submit to the Administrative Office of Courts each month, the following data:

(i) Total number of participants at the beginning of the month;

(ii) Total number of participants at the end of the month;

(iii) Total number of participants who began the program in the month;

(iv) Total number of participants who successfully completed the program in the month;

(v) Total number of participants who left the program in the month;

(vi) Total number of participants who were arrested for a new criminal offense while in the program in the month;

(vii) Total number of participants who were convicted for a new criminal arrest while in the program in the month; and

(viii) Total number of participants who committed at least one (1) violation while in the program and any resulting sanction(s).

(b) By August 1, 2018, and each year thereafter, the Administrative Office of Courts shall report to the PEER Committee the information in subsection (4)(a) of this section in a sortable, electronic format.

(5) Mental health courts may individually establish rules and may make special orders and rules as necessary that do not conflict with rules promulgated by the Supreme Court or the Administrative Office of Courts.

(6) A mental health court may appoint the full or part-time employees it deems necessary for the work of the mental health court and shall fix the compensation of those employees, who shall serve at the will and pleasure of the senior circuit court judge.

(7) A mental health court established under this chapter is subject to the regulatory powers of the Administrative Office of Courts as set forth in Section 9-27-13.

HISTORY: Laws, 2017, ch. 416, § 4, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 17, eff from and after July 1, 2019.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Section 9-27-13, referred to in this section, was repealed by Laws of 2019, ch. 466 § 23, effective July 1, 2019.

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment, substituted references to "mental health court" and "court" for references to "pilot program," "program" and "mental health diversion pilot program" throughout the section.

§ 9-27-9. Mental health intervention services; certification of inpatient treatment.

(1) A mental health court's mental health intervention component shall provide for eligible individuals, either directly or through referrals, a range of necessary court treatment services, including, but not limited to, the following:

(a) Screening using a valid and reliable assessment tool effective for identifying persons affected by mental health issues for eligibility and appropriate services;

(b) Clinical assessment;

(c) Education;

(d) Referral;

(e) Service coordination and case management; and

(f) Counseling and rehabilitative care.

(2) Any inpatient treatment ordered by the court shall be certified by the Department of Mental Health, other appropriate state agency or the equivalent agency of another state.

HISTORY: Laws, 2017, ch. 416, § 5, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 18, eff from and after July 1, 2019.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "mental health court's" for "mental health diversion pilot program's" in (1).

§ 9-27-11. Eligibility for alternative sentencing through local mental health court.

(1) In order to be eligible for alternative sentencing through a local mental health court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence as defined in Section 97-3-2, other than burglary under Section 97-17-23(1), within the previous ten (10) years.

(b) The crime before the court cannot be a crime of violence as defined in Section 97-3-2, other than burglary under Section 97-17-23(1).

(c) Other criminal proceedings alleging commission of a crime of violence other than burglary under Section 97-17-23(1) cannot be pending against the participant.

(d) The crime before the court cannot be a charge of driving under the influence of alcohol or any other substance that resulted in the death of a person. In addition, persons who are ineligible for nonadjudication under Section 63-11-30 shall be ineligible to participate in a mental health court.

(e) The crime charged cannot be one of trafficking in controlled substances under Section 41-29-139(f), nor can the participant have a prior conviction for same.

(2) Participation in the services of a mental health treatment component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another mental health court. In cases transferred from another jurisdic-

tion, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3)(a) As a condition of participation in a mental health court, a participant may be required to undergo a chemical test or a series of chemical tests as specified by the program. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the mental health court or the laboratory; however, if testing is available from other sources or the program itself, the judge may waive any fees for testing. Fees may be waived if the applicant is determined to be indigent.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the mental health court.

(4) A person does not have a right to participate in a mental health court under this chapter. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in the mental health court under this chapter. However, any person meeting the eligibility criteria in subsection (1) of this section, shall, upon request, be screened for admission into the court's program.

HISTORY: Laws, 2017, ch. 416, § 6, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 19, eff from and after July 1, 2019.

Joint Legislative Committe Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence of (4) by substituting "mental health court under this chapter" for "mental health under this chapter." The Joint Committee ratified the correction at its August 12, 2019, meeting.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "court" for "diversion pilot program" and "diversion program" throughout the section; and added the last sentences in (3)(a) and (4).

§ 9-27-13. Repealed.

Repealed by Laws, 2019, ch. 466, § 23, eff from and after July 1, 2019.

§ 9-27-13. [Laws, 2017, ch. 416, § 7, eff from and after passage (approved Apr. 11, 2017).]

Editor's Notes — Former § 9-27-13 related to the duties of the Administrative Office of Courts regarding mental health diversion pilot programs established under this chapter.

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

§ 9-27-15. Funding for mental health courts.

(1) All monies received from any source by a mental health court shall be

accumulated in a local fund to be used only for mental health court purposes. Any funds remaining in a local fund at the end of a fiscal year shall not lapse into any general fund, but shall be retained in the mental health court fund for the funding of further activities by the mental health court.

(2) A mental health court may apply for and receive the following:

(a) Gifts, bequests and donations from private sources.

(b) Grant and contract monies from governmental sources.

(c) Other forms of financial assistance approved by the court to supplement the budget of the mental health diversion program.

(3) The costs of participation in a mental health treatment program required by the mental health court may be paid by the participant or out of user fees or such other state, federal or private funds that may, from time to time, be made available.

(4) The court may assess reasonable and appropriate fees to be paid to the local mental health court fund for participation in a mental health treatment program; however, all fees may be waived by the court if the applicant is determined to be indigent.

HISTORY: Laws, 2017, ch. 416, § 8, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 20, eff from and after July 1, 2019.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "court" for "diversion pilot program" throughout the section; deleted the former last sentence of (1), which read: "Any funds remaining in a local fund at the time of repeal of this chapter shall lapse into the appropriate county's general fund"; and added "however, all fees may be waived-...determined to be indigent" at the end of (4).

§ 9-27-17. Immunity for mental health court staff.

The director and members of the professional and administrative staff of the mental health court who perform duties in good faith under this chapter are immune from civil liability for:

(a) Acts or omissions in providing services under this chapter; and

(b) The reasonable exercise of discretion in determining eligibility to participate in the mental health court.

HISTORY: Laws, 2017, ch. 416, § 9, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 21, eff from and after July 1, 2019.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "court" for "diversion program" twice.

§ 9-27-19. Successful completion of requirements imposed by mental health court may result in dismissal of charge and prosecution or expunction of criminal record.

If the participant completes all requirements imposed upon him by the mental health court, the charge and prosecution shall be dismissed. If the defendant or participant was sentenced at the time of entry of a plea of guilty, the successful completion of the mental health court order and other requirements of probation or suspension of sentence will result in the record of the criminal conviction or adjudication being expunged.

HISTORY: Laws, 2017, ch. 416, § 10, eff from and after passage (approved Apr. 11, 2017); Laws, 2019, ch. 466, § 22, eff from and after July 1, 2019.

Editor's Notes — Laws of 2017, ch. 416, § 13, effective April 11, 2017, provides:

"SECTION 13. Sections 1 through 11 of this act shall be codified as a new chapter in Title 9, Mississippi Code of 1972."

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

Amendment Notes — The 2019 amendment substituted "court" for "diversion program" twice; and deleted "including the payment of fines and fees assessed" preceding "the charge and prosecution shall be dropped."

§ 9-27-21. Repealed.

Repealed by Laws, 2019, ch. 466, § 23, eff from and after July 1, 2019.

§ 9-27-21. [Laws, 2017, ch. 416, § 11, eff from and after passage (approved Apr. 11, 2017).]

Editor's Notes — Former § 9-27-21 authorized the establishment of mental health diversion pilot programs in Second, Third, Eighth, Twelfth, Seventeenth and Twentieth Circuit Court Districts.

Laws of 2019, ch. 466, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Criminal Justice Reform Act.'"

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